

Exhibit A

LICENSE AGREEMENT

BETWEEN

TRUMP MARKS LLC

LICENSOR,

AND

CRESCENT HEIGHTS DIAMOND, LLC

LICENSEE

Dated: New York, N.Y.
May 23, 2006

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LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the ^{23rd} day of May, 2006, between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor"), with a principal place of business at 725 Fifth Avenue, New York, New York 10022, and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company, ("Licensee"), with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137. The Licensor and Licensee may hereinafter sometimes be referred to as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Donald J. Trump, a world-renowned builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields, is the owner of certain United States Trademarks covering certain real estate services as well as certain other rights in the name, trademark, service mark, designation, and identification "TRUMP;" and

WHEREAS, pursuant to a certain License and Quality Control Agreement dated as of May 25, 2005, between Trump Marks LP, as licensor and Licensor as licensee, Licensor controls the licensing of the aforesaid Trump trademarks; has the exclusive right to grant the license to Licensee provided herein; and is the proper party to enter into this Agreement; and

WHEREAS, Licensee intends to (i) develop a building (the "Building") on certain land (the "Land") owned or to be acquired by Licensee, in Ramat Gan, Israel, which Land is legally described as: Parcel 233 of block 6128, having a registered area of 547 meters; parcel 476 of block 6128, having a registered area of 2047 meters; parcel 468 of block 6128, having a registered area of 9249 meters; parcel 47 of block 6128, having a registered area of 2961 meters; and all that is built on and attached to the said four parcels (the Land, together with the Building to be erected thereon, collectively the "Tower Property"), which, on completion of construction will include a first-class, luxury residential condominium component, which may include storage spaces (the "Storage Spaces") and garage spaces (the "Garage Spaces") (collectively, the "Residential Component") and, a retail component, which may include one or more restaurant units and one or more retail components of the type commonly located in similar projects, (collectively, the "Retail Component"); (ii) design, develop, construct and operate the Tower Property or portions thereof in the form of condominium ownership; and (iii) market, sell and/or lease the units forming part of the Residential Component and the Retail Component (individually, a "Unit" and collectively, the "Units") to be contained in the Building. All of the foregoing activities recited on subdivisions (i) through (iii) above, inclusive, to be performed in accordance with the "Trump Standard" (as herein defined) so as to maximize the value of the Tower Property for the benefit of Licensee and Licensor; and

WHEREAS, Licensee desires to use the name "Trump Tower"; which, together with any "Approved Logo" (as herein defined) is referred to herein as the "New Trump Mark"; and

WHEREAS, Licensor is willing to grant to Licensee the right to use the New Trump Mark in accordance with and subject to the terms, covenants and provisions of this Agreement.

NOW, THEREFORE, for One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Licensor and Licensee do hereby agree as follows:

1. License; Registration; Licensor Restriction

(a) Promptly after the date hereof, Licensor shall submit the New Trump Mark for registration (the "Registration") with The Israeli Trademarks Office (the "ITO"). Licensee acknowledges and agrees that Licensor shall not be liable or responsible to Licensee for any delay in or limitation imposed upon the New Trump Mark during the Registration process or any refusal by the ITO to register the New Trump Mark, and all of Licensee's obligations hereunder regarding the use of the New Trump Mark, including but not limited to Licensee's payment obligations hereunder shall remain in effect whether or not Registration of the New Trump Mark shall occur. Licensor shall have the right to register this Agreement with the appropriate Israeli authorities.

(b) Licensor hereby grants to Licensee, during the "Term" (as herein defined), a nonexclusive (subject to Section 1(g)), nonassignable (except as provided in Section 12(b) and (c) hereof), nontransferable right, without the right to grant sublicenses, to use the New Trump Mark alone or as part of the Approved Logo(s) solely for the purpose of identifying the Tower Property at its above-mentioned location, subject to all the terms, covenants and provisions of this Agreement. Licensee shall be required to, and hereby agrees to, use the New Trump Mark as the sole identification of the Building during the Term. Licensee shall also have the right to use the New Trump Mark in signage, print medium, television, radio, internet (the "Internet"), and other forms of promotional and publicity materials and facilities, solely with respect to the promotion of the Building, subject to all the terms, covenants and provisions of this Agreement. In connection with Licensee's exercise of the foregoing marketing rights, Licensor reserves the right to prohibit the making of representations on behalf of Licensor or Donald J. Trump, or the use of material which, in the judgment of Licensor, do not accurately reflect facts about Licensor and/or Donald J. Trump.

(c) Licensor hereby grants to Licensee, during the Term, the right to permit Residential Component Unit owners and lessees, and Retail Component Unit owners and lessees (collectively, "Occupants") to use the New Trump Mark solely for the purpose of identifying in advertising and promotion of their Residential and Retail Component Units in connection with offers to sell or lease such Units, and as the address of such Occupants at the Building. However, such right shall not permit the Occupants to use the New Trump Mark as part of the name or identification of such Occupants. Trade names such as "Trump Tower Restaurant" or "The Restaurant at Trump Tower" are not permitted or authorized hereunder. Licensee agrees that the foregoing rights and restrictions governing Licensee's and such Occupants' use of the New Trump Mark, including but not limited to its obligation to comply with the Trump Standard, and Licensor's access to the Building as provided in Paragraph 3(d) hereof, shall be set forth in:

(i) each contract of sale or lease, pursuant to which an Occupant shall acquire or lease a Unit from Licensor; and

(ii) each succeeding contract of sale, lease, or sublease pursuant to which an Occupant shall sell or otherwise transfer or lease its Unit or assign its lease or sublease its Unit; and

(iii) the bylaws of the Building (Takanon Habait Hameshutaf) (the "Bylaws") which shall be registered by Licensee with the Tel Aviv, Israel Land Registry, together with the registration of each purchasing Occupant's ownership of its Unit.

Each such contract of sale, lease, assignment, sublease and the Bylaws, and an English translation of each, shall be subject to the approval of Licensor. Licensee agrees to cooperate fully with, and furnish assistance to Licensor in any action by Licensor required to ensure that any use of the New Trump Mark by the Occupants complies with the terms and conditions of this Agreement.

(d) In connection with its identification and promotion of the Building, Licensee may propose to use certain composite trademark(s) and/or logos in association with and/or incorporating the New Trump Mark, including, but not limited to, a logo that substantially consists of distinctive design elements of the Building, (collectively, the "Proposed Logo" or "Proposed Logos"). Prior to any adoption and/or use of any Proposed Logo, Licensee shall submit a graphical representation of such Proposed Logo to Licensor precisely in the manner which Licensee intends such Proposed Logo to appear in commercial use. Following Licensee's submission of such Proposed Logo to Licensor, Licensor shall review such Proposed Logo within fifteen (15) days of receipt thereof, and if such Proposed Logo meets with Licensor's preliminary approval, Licensor shall commission its Israel trademark counsel to conduct a full trademark search and make an assessment as to the likely registrability and/or availability of such Proposed Logo for use. Licensee shall bear the costs incurred in the trademark clearance assessment of each Proposed Logo. Upon obtaining the assessment of counsel regarding clearance of any Proposed Logo, Licensor shall, in its reasonable discretion, within fifteen (15) days of receipt of counsel's said assessment, determine whether to approve such Proposed Logo. Licensor shall promptly notify Licensee in writing whether or not it is permitted to adopt and/or use any given Proposed Logo. Licensee may submit multiple alternative Proposed Logos at the same time, which shall proceed concurrently through the approval process, subject to the provisions of this Agreement. Licensee shall not adopt and/or use any Proposed Logo unless and until it obtains Licensor's approval, in writing, in the manner set forth in this subparagraph 1(d).

(e) If the Licensor approves any Proposed Logo, such Proposed Logo shall then be referred to as an "Approved Logo." At such time that the Licensor approves any Proposed Logo, in writing, Licensee acknowledges and agrees that Licensor shall own all right, title and interest in and to any and all Approved Logos and that Licensee's sole rights with respect thereto shall be to use such Approved Logos subject to, and in accordance with, the terms, covenants and provisions of this Agreement. If and when any Proposed Logo is approved in writing by Licensor in accordance with the terms of this Agreement, such Approved Logo will be considered as of the date of such approval as a New Trump Mark and will be subject to the terms and conditions of this Agreement. On termination of this Agreement, Licensor shall

assign to Licensee (in a form reasonably acceptable to Licensee) all of Licensor's right, title and interest in and to the Approved Logos adopted and used by Licensee, if any, but only that portion of such Approved Logos (the "Design Logos") that do not contain any element of the name "Trump" or can be readily separated and clearly distinguished from the name "Trump."

(f) Licensor shall file trademark applications for the New Trump Mark (other than Approved Logos), at Licensor's expense, in English and Hebrew, and each Approved Logo, at Licensee's expense, including the expense of any renewals of any such Registration, with the ITO in Classes 36 and 37. Applications for Approved Logos, if approved by the ITO, will be deemed a part of the New Trump Mark.

(g) Provided that Licensee is not in default of this Agreement after any applicable notice and cure period provided herein, and this Agreement is in full force and effect, then:

A. until the first to occur of (i) the date that is forty-two (42) months from execution of this Agreement; and (ii) the date upon which at least ninety (90%) percent of the Units available for sale to the public are subject to binding contracts of sale, Licensor will not license the name "Trump" for a residential condominium building, with or without storage spaces, garage spaces and retail areas, within the area of Tel Aviv, Israel shown cross-hatched on Exhibit C annexed hereto and made a part hereof. (the "Restricted Area"); and

B. until the date that is twelve (12) months from the date hereof, Licensor will not license the name "Trump" for a "Condominium Hotel" (as herein defined).

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" name, other than the New Trump Mark, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that terms is customarily used, or for any other use not expressly prohibited herein, anywhere in Tel Aviv or elsewhere in Israel.

D. For the purposes of this Paragraph 1(g) "Condominium Hotel" shall mean apartment hotels and/or suite hotels and/or apartment buildings (which may be residential condominium buildings) (x) in which the owners have the right to include their apartments or units in a rental program for predominantly transient occupancy, whether short-term, medium-term or long-term, with a majority of the apartments or units of the building anticipated, but not required, to participate in the rental program on a predominantly short-term transient occupancy basis; (y) which provide to such apartment or unit owners services customarily provided by a hotel, such as a registration desk, cleaning services and the like; and (z) which are professionally managed by an affiliate of Licensor or by a third-party manager.

(h) Licensor shall cause Donald J. Trump to make one (1) trip to the Tower Project (the "Trump Appearance"), at Licensee's expense for first class air transportation and first class accommodations and food, for no more than one (1) day of six (6) working hours, for

the promotion of the Tower Project to the public. The Trump Appearance shall occur on a date reasonably acceptable to the Parties, but consistent with Donald J. Trump's professional schedule.

(i) Any Internet website addresses obtained and utilized by Licensee with respect to the promotion of the Tower Property shall be subject to the approval of Licensor in writing, which approval shall not be unreasonably withheld or delayed; and if so approved, shall be issued exclusively in the name of Donald J. Trump, as the owner thereof.

2. Exclusions to License; Use of License

(a) Licensee recognizes and agrees that no rights, other than as expressly provided herein, to use the New Trump Mark are granted hereunder, whether as to activities, products, services, or otherwise. Solely for promotional purposes, Licensee may produce, sell or give away promotional items, décor elements, souvenir products, (e.g. pens, bathroom towels, tumblers and monogrammed clothing) and any items customarily sold in a spa (including but not limited to cosmetics, robes, slippers, and t-shirts, respectively), which bear the New Trump Mark, have been reasonably approved by Licensor as to design, development, marketing and sales, and conform to the Trump Standard. The following merchandising items shall be royalty-free during the term of this Agreement: (i) promotional give-aways, and (ii) any items purchased from Licensor or its designee. As for other merchandising items, including those sold in a sundries store or gift shop or a spa or other portions of the Tower Property, Licensee will pay or will cause any tenant, licensee or other operator thereof to pay, to Licensor royalties in respect of such sales in an amount equal to fifteen percent (15%) of all net sales after deduction of only Israeli Value Added Tax and returns (the "Sales Royalties"). Sale Royalties will be paid to Licensor quarter-annually within thirty (30) days of the close of each quarter. Payment of the Sales Royalties shall be accompanied by Licensee's statement certified by the Chief Financial Officer of Licensee as true and complete (the "Statement") in such detail as Licensor shall reasonably require, with respect to the Sales Royalties provided in such Statement. Licensee shall not have the right to use the New Trump Mark in connection with individual facilities within the Tower Property, or with any products or services sold or offered for sale in the Tower Property or elsewhere, except as provided herein, or if and as may subsequently be agreed to in writing by Licensor in Licensor's sole and absolute discretion.

(b) Licensee also recognizes and agrees that it has no other rights to the use of the name "Trump" other than in respect to the licensed New Trump Mark, and recognizes Licensor's sole and exclusive ownership of all proprietary rights in the name "Trump" and in the New Trump Mark. Licensee will not register nor attempt to register the New Trump Mark or "Trump" or any derivations or phonetic equivalents thereof, as a name, mark or otherwise. Licensee agrees neither to assert any claim to any goodwill, reputation, or ownership of the name "Trump" or in the New Trump Mark nor to contest the validity or ownership of the New Trump Mark. Licensee agrees that it will not do, or permit any act or thing to be done, in derogation of any of the rights of Licensor in connection with Licensee's use of the New Trump Mark either during the term of this Agreement or thereafter and that Licensee will not use the New Trump Mark except as licensed hereunder. Licensee further acknowledges and agrees that any goodwill associated with the use of the New Trump Mark shall inure directly and exclusively to Licensor.

(c) All uses of the New Trump Mark by Licensee shall faithfully reproduce the design and appearance of the New Trump Mark.

(d) At the request of Licensor, Licensee shall include the trademark designation legally required or useful for enforcement (e.g. "TM", "SM" or @, as applicable) in connection with Licensee's use of the New Trump Mark.

(e) Except as specifically authorized under this Agreement, Licensee shall not use the New Trump Mark in whole or in part on or in connection with any other business and shall not permit or authorize any other person or entity to use the New Trump Marks in any manner.

(f) Licensor shall have the right to review and approve in writing, all promotional materials or any other materials (with an English translation) using the New Trump Mark prior to Licensee's use of such materials. Licensor shall within Licensor's reasonable discretion, review and approve such materials within ten (10) business days of its receipt of such materials; provide however, if Licensor shall fail to approve or shall reject any such submission within such ten (10) business day period and after three (3) days following an additional written notice to Licensor, sent upon the expiration of such ten (10) business day period, such submissions shall be deemed approved by Licensor. Notwithstanding the foregoing, in no event shall Licensee issue a press release concerning Licensor (or Donald J. Trump) without Licensor's prior written approval.

(g) Licensee agrees to ensure that, in such cases as Licensor may require, use or display of the New Trump Marks are in the manner sufficient to indicate that the New Trump Marks are owned by Licensor and are being used under license.

3. **Trump Standard; Trump Standard Default; Power of Attorney.** As a material inducement for the grant of the license provided herein, Licensee covenants and agrees with Licensor:

(a) to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property, in each case, with the level of quality and luxury associated with the premier, first class mixed-use residential condominium building known as the Akirov Building in Tel Aviv, Israel (the "Signature Property"); and

(b) at all times, to maintain, and ensure by the provisions of the Bylaws, and by each contract for the sale of a Unit and each lease and sublease of a Unit, that Licensee and each Occupant (hereinafter singularly, a "License Beneficiary," and collectively, "License Beneficiaries") maintain standards, with respect to the Tower Property, and the Residential and Retail Components thereof, as the case may be, that are at least equal to those standards of design, development, construction, marketing, sale, equipping, operation, repair and maintenance followed by the Signature Property (for the purposes of this Agreement, such standards as the date hereof, are collectively called the "Trump Standard").

(c) Using its commercially reasonable judgment, Licensor shall be the sole judge of whether a License Beneficiary is maintaining the Trump Standard, and if Licensor, in its

commercially reasonable judgment, determines that the Trump Standard is not being maintained or that a License Beneficiary has breached any other provision of this Agreement relating to the Trump Standard, (collectively, a “**Trump Standard Default**”) Licensor may notify, as applicable, the License Beneficiary thereof in writing (the “**Trump Standard Default Notice**”) and if the License Beneficiary shall fail to fully correct to Licensor’s satisfaction any condition or cure any Trump Standard Default identified in the Trump Standard Default Notice, within thirty (30) days of the receipt of such Trump Standard Default Notice, Licensor may immediately terminate this Agreement and all rights licensed hereunder by notifying the License Beneficiary in writing of such termination; provided however, that so long as the Trump Standard Default cannot be cured solely by the payment of money and the License Beneficiary shall have commenced the curing of such Trump Standard Default within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, the License Beneficiary shall have such reasonable additional period of time as shall be reasonably necessary to cure such Trump Standard Default, but in no event more than the shorter of (i) one hundred twenty (120) days, or (ii) the number of days of “Unavoidable Delay” (as herein defined) that the License Beneficiary shall contemporaneously document in writing to Licensor.

(d) Licensor or its representatives shall at all times have access to, and the right to inspect, the Tower Property, interior and exterior (but excluding the interior of non-Licensee or its designees’ privately owned units, unless authorized by such unit owners), and the procedures utilized by the License Beneficiaries, in the operation and maintenance of the Residential Component and Retail Component during normal business hours, on not less than twenty-four (24) hours notice, but without unreasonably interfering with the operation of the Tower Property, to confirm License Beneficiaries’ compliance with the provisions of this Agreement.

(e) (i) Concurrently with the execution of this Agreement, Licensee shall execute and deliver to Licensor a Power of Attorney (the “**Power**”) in the form and on the terms annexed hereto as Exhibit B and made a part hereof, in form sufficient for registration with the appropriate Israel governmental authority, pursuant to which Licensee irrevocably designates Licensor or its attorneys, as attorney-in-fact for Licensee, to execute and deliver on behalf of Licensee, any such documents as shall be required to cause the registration of this Agreement, as provided in Paragraph 1(a) hereof, to be cancelled in the event that this Agreement expires or is terminated for any reason and Licensee shall fail to commence an action (the “**Action**”) to enjoin or contest the cancellation of the registration of this Agreement within thirty (30) days of such termination. In the event Licensee shall commence an Action, then Licensor may cause the registration of this Agreement to be cancelled upon the conclusion of such litigation.

(ii) Subject to the provisions of Subsection (i) above, Licensor agrees to register Licensee as an “authorized person” in accordance with Section 50 and 51 of the Israel Trademark Ordinance.

4. Delivery of Plans and Specifications to Licensor

(a) Licensee shall deliver to Licensor the following preliminary plans and specifications, information and other Trump Standard related items (“**Preliminary Plans**”) for

the Building, for the Licensor's written approval and determination that they comply with the Trump Standards:

- (i) The engineering and design of the Building and all service systems of the Building;
- (ii) The exterior design of the Building, including, but not limited to the façade, signage, landscaping, access methods, and illumination;
- (iii) The interior signage, unit layouts and room counts;
- (iv) All furniture, fixtures, equipment, and appliances;
- (v) The sales and marketing plan for the Tower Property including sales office location and layout, sales staff training and sales collateral materials;
- (vi) The identity of the contractors proposed by Licensee for the construction of the Tower Property; provided, however, Licensor shall be deemed to approve any contractor that is acceptable to Licensee's institutional construction lender for the Building; and
- (vii) The manager(s) of the Tower Property; provided, however, Licensor shall be deemed to approve any manager that is acceptable to Licensee's institutional construction lender for the Building.

Within twenty (20) business days of receipt of the Preliminary Plans, Licensor will either approve the same or send a "Deficiency Notice" (as herein defined) to Licensee, whereupon Licensee shall prepare and deliver to Licensor revised Preliminary Plans ("Revised Preliminary Plans") which satisfy the Deficiency Notice. In the event Licensor does not deliver to Licensee an approval or issue a Deficiency Notice within twenty (20) business days of receipt of any Revised Preliminary Plans, Licensor shall be deemed to have approved the Revised Preliminary Plans.

(b) Prior to the commencement of the demolition of existing improvements or construction of the Tower Property, Licensee shall submit its final plans and specifications therefor (the "Final Plans and Specifications") including each of the items delineated in Subsection 4(a) (i) – (vii) hereof, to Licensor, to the extent not previously approved by Licensor in writing. Following Licensee's submission of such Final Plans and Specifications, Licensor shall review such Final Plans and Specifications within fifteen (15) business days of receipt thereof. Within fifteen (15) business days after review of the Final Plans and Specifications, Licensor shall deliver a report to Licensee, which either (1) approves, in writing, Licensee's Final Plans and Specifications or (b) identifies in detail and with particularity each portion of the Final Plans and Specifications that does not comply with the Trump Standard (the "Deficiency Notice") and specifies what changes need to be made to the Final Plans and Specifications before Licensor shall approve the Final Plans and Specifications; Licensee shall thereafter

diligently attempt to cure such deficiencies, and upon completion, shall re-submit the revised Final Plans and Specifications to Licensor. Upon obtaining the revised Final Plans and Specifications, Licensor shall review the same, and within ten (10) business days after receipt thereof, shall either: (x) approve the revised Final Plans and Specifications or (y) issue another Deficiency Notice. If the Parties reach an impasse such that the Revised Preliminary Plans or the Final Plans are not approved by Licensor after Licensor issues three (3) or more Deficiency Notices (with respect to each of the Revised Preliminary Plans and the Final Plans and Specifications), Licensor and Licensee shall each have the right to terminate this Agreement. Licensor agrees to work reasonably with Licensee to correct any deficiencies provided in a Deficiency Notice. Licensor and Licensee may exercise such right of termination by delivering written notice to the other (the "Termination Notice") within, but not later than, fifteen (15) business days after the third Deficiency Notice, whereupon this Agreement shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, Licensor shall be entitled to retain any portion of the Royalty paid to Licensor prior to the date of the termination of this Agreement. Once approved, Licensee shall construct or cause construction of the Tower Property in accordance with the Final Plans and Specifications, approved by Licensor, which shall adhere to and comply with the Trump Standard.

5. Royalty

(a) Licensee shall pay to Licensor for the rights granted to Licensee hereunder, the "Royalty" (as herein defined) set forth on Exhibit "A" annexed hereto and made a part hereof.

(b) In the event Licensee shall be required to withhold any taxes or other mandatory payments imposed by the State of Israel ("Licensor Local Tax Obligation"), and provided that at the time of the withholding there is a double taxation treaty in force between the State of Israel and the United States enabling the Licensor to obtain a credit in the United States with respect to such withholdings, Licensee shall pay such Licensor Local Tax Obligation on Licensor's behalf and furnish to Licensor the receipt, remittance voucher or other original evidence of such payment of any Licensor Local Tax Obligation so paid so that Licensor can apply for a corresponding tax credit in the United States. Licensee shall fully cooperate with Licensor and provide such information and records as Licensor may reasonably require in connection with any application to the tax authorities of Israel and/or the United States, including but not limited to, the obtaining of a credit for any Licensor's Local Tax Obligation paid in the State of Israel which Royalties and other payments are being made by Licensee to Licensor hereunder.

6. Term. The term of this Agreement (the "Term") shall commence on the date hereof and shall end on the first to occur of: (i) the expiration or earlier termination of this Agreement, as provided herein or (ii) the day upon which the Tower Property shall no longer be known by the New Trump Mark, and Licensor and Licensee have not agreed in writing or are not in substantive discussions for the use of a Trump Name as the name of the Tower Project.

7. **Non-Trump Standard Default: Licensor's Default**

(a) In addition to the provisions of Paragraph 3 hereof, Licensee shall be considered in default and Licensor may terminate this Agreement if Licensee shall default in (i) the payment of a sum of money and such default shall not be cured within a period of ten (10) days after written notice of such default is given by Licensor to Licensee, or (ii) except as otherwise provided in Section 3(c) hereof as they are related to a Trump Standard Default, the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensor to Licensee; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensee shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensee shall have such additional time as shall be reasonably necessary to cure such default, not to exceed sixty (60) days. During any such default by Licensee, any sum of money due hereunder shall accrue interest at the highest rate permitted by applicable law.

(b) Licensor shall be considered in default and Licensee may terminate this Agreement if Licensor shall default in the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensee to Licensor; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensor shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensor shall have such additional time as shall be reasonably necessary to cure such default, not exceeding sixty (60) days.

8. **Licensor's Termination.** In addition to any other right or remedy of Licensor hereunder, Licensor shall have the absolute right to terminate this Agreement and the rights licensed hereunder, upon ten (10) days prior written notice of such termination to Licensee, if:

- (a) Licensee files a petition in bankruptcy or is adjudged bankrupt; or
- (b) a petition in bankruptcy is filed against Licensee and not discharged within sixty (60) days; or
- (c) Licensee becomes insolvent, or makes an assignment for the benefit of its creditors or any arrangement pursuant to any bankruptcy or like law; or
- (d) a receiver is appointed for Licensee or its business; or
- (e) a substantial portion of the Building is damaged or destroyed by fire or other casualty and the Building is not rebuilt in a diligent and expeditious manner and in compliance with the Trump Standard; or
- (f) the Tower Property or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Tower Property cannot be operated in a manner consistent with the Trump Standard; or

(g) Sonny Kahn, Russell W. Galbut and Bruce A. Menin (singularly, a "Principal" and collectively the "Principals") and any successor to any Principal approved by Licensor or permitted pursuant to Paragraph 12(c) hereof, cease collectively to own a majority of the direct or indirect interests in Licensee and to control the day to day activities of Licensee.

(h) The construction of the Building fails to commence within twenty-four (24) months from the date of this Agreement, unless such delay shall result from any strikes, lockouts or labor disputes, inability to obtain labor (but excluding all delays resulting from delays in obtaining permits for foreign workers that exist for more than ninety (90) days in the aggregate) or materials or reasonable substitutes thereof, acts of God, governmental restrictions, regulations or controls, terrorist, enemy or hostile government action, civil commotion, war, riot or insurrection, fire or other casualty or other events similar to the foregoing beyond the reasonable control of Licensee (collectively, "Unavoidable Delays") in which event such twenty-four (24) month period shall be deemed extended one (1) day for each day of Unavoidable Delay which is contemporaneously documented in writing to Licensor; or

(i) A Tofes 4 (Form 4) has not been issued for the Building within forty (40) months from the commencement of construction, except as a result of Unavoidable Delays, in which event, such thirty-six (36) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor; or

(j) Closings have not occurred or binding contracts with appropriate deposits have not been accepted by Licensee for at least seventy (70%) percent of the Units within forty (40) months from the date of commencement of construction, except as a result of Unavoidable Delays, in which event, such forty (40) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor.

(k) Licensee shall notify Licensor in writing of each Unavoidable Delay provided in subparagraphs (h) through (j) inclusive, above and the reasonably anticipated duration of the same, promptly after the occurrence of the same, otherwise such Unavoidable Delay shall be deemed waived.

(l) Notwithstanding the termination of this Agreement pursuant to any of its terms, Licensor shall be entitled to receive, and Licensee shall pay to Licensor all Royalties that have accrued to Licensor prior to the date of termination. Royalties due to Licensor pursuant to this Section 8 (l) shall be paid to Licensor on the delivery of possession of a Unit, and such obligations shall survive such termination. A Licensee Fee shall accrue to Licensor on date that a contract of sale or a lease of a Unit is entered into.

9. Licensee's Termination. Notwithstanding anything to the contrary herein, including but not limited to the provisions of Paragraph 7(b) hereof, Licensee shall have the right to terminate this Agreement upon ten (10) days prior written notice of such termination to Licensor if:

(a) the Building or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Building and land upon which it is located cannot be operated in a manner consistent with the Trump Standard; or

(b) prior to the sale of at least seventy (70%) percent of the Units in the Tower Property that are offered for sale to the public, Donald J. Trump (i) dies; (ii) becomes permanently incapacitated or otherwise ceases permanently to render services to Licensor; (iii) is no longer a principal of Licensor; (iv) is convicted of a felony; (v) files a petition in bankruptcy or is adjudged bankrupt; (vi) a petition in bankruptcy is filed against Donald J. Trump and not discharged within sixty (60) days; or (vii) becomes insolvent, or makes an assignment for the benefit of his creditors or any arrangement pursuant to any bankruptcy or like law.

(c) The termination of this Agreement pursuant to this Paragraph 9 shall not impair Licensor's right to receive the Royalty in respect of units for which purchase contracts and leases shall be entered into prior to the date of termination.

10. **Discontinuation of Use of Marks.** Upon the expiration or termination of this Agreement for any reason, Licensee will immediately undertake its best efforts to discontinue any and all uses of the Trump Marks, by itself and by any Occupant, and make and shall cause each Occupant to make, no further use of the same whatsoever. If Licensee or any Occupant fails to so discontinue all such use within ninety (90) days, Licensor shall be entitled to immediate injunctive relief in addition to damages and all other applicable remedies.

11. **Licensee Indemnification.** Licensee hereby agrees to indemnify, defend, and hold free and harmless Licensor, its members, shareholders, employees, representatives, directors, officers, and Donald J. Trump and its and his successors and assigns (collectively, "Licensor Indemnified Parties") from and against any and all causes of action (including, but not limited to, product liability actions, tort actions and actions of any Occupants) and reasonable out-of-pocket expenses, including, but not limited to, interest, penalties, attorney and third party fees, and all reasonable amounts paid in the investigation, defense, and/or settlement of any claims, suits, proceedings, judgments, losses, damages, costs, liabilities and the like, (collectively "Claims and Expenses") which may be suffered, incurred or paid by any Licensor Indemnified Party, arising in whole or in part, directly or indirectly, out of (i) Licensee's or its agents, servants, employees or contractors acts or omissions in breach or default of this Agreement or (ii) the design, construction, operation, maintenance or repair of the Tower Property; or (iii) any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, arising from any use of the Approved Logos or (iv) Licensee's or its agents, servants, employees or contractors failure to comply with any laws. The foregoing indemnification shall not apply to any Claims and Expenses resulting from the negligence or willful acts of any Licensor Indemnified Party.

12. **Assignment**

(a) Licensor may assign this Agreement without the prior consent of Licensee to Donald J. Trump or an entity controlled by Donald J. Trump, or any heir, successor or legal representative of Licensor or Donald J. Trump; provided the assignee assumes the terms and conditions of this Agreement and owns or controls the New Trump Mark. This Agreement and Licensee's use of the New Trump Mark hereunder shall inure solely to the benefit of Licensor and to any and all heirs, successors or assignees of Licensor who owns or controls the New Trump Marks.

(b) Licensee may assign this Agreement as collateral to an institutional construction lender (the "Lender") without the written consent of Licensor, provided that (i) the form and content of such assignment shall be reasonably acceptable to Licensor; and upon an event of default by Licensee under any such institutional construction loan the Lender shall, within thirty (30) days of the date upon which it legally obtains possession of the Tower Property, assume the obligations of Licensee hereunder. Until such time as the Lender shall assume the obligations of Licensee hereunder, it shall have no right or interest in or to the New Trump Mark.

(c) The Principals may by will or intestacy transfer their direct or indirect interests in Licensee to each other or to the spouses or children of the Principals, which transferees shall be bound by the terms and provisions of this Agreement.

13. Infringement; Licensor Indemnification

(a) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based solely on the use of the New Trump Mark (exclusive, however, of any Approved Design Logos) for which Registration has issued by the ITO pursuant to the terms of this Agreement, is instituted against Licensee, Licensor hereby agrees, subject to the other provisions of Section 1(a) and this Section 13(a), to indemnify, defend, and hold free and harmless Licensee, its employees, representatives, directors, officers, successors and permitted assigns from and against any and all such causes of action and reasonable out-of-pocket expenses, including, without limitation, interest, penalties, attorney and third party fees which may be suffered, incurred or paid by Licensee in connection therewith. Licensee agrees to cooperate with Licensor in the defense of such action and to take no actions of any kind regarding such claim without the express prior written consent of Licensor, such consent not to be unreasonably withheld or delayed. Licensor shall have the sole and absolute right to settle any such action and to negotiate and determine the settlement terms. Licensee shall take all steps reasonably recommended to mitigate its damages incurred, including the removal of any New Trump Mark from the Tower Property and discontinuance of any use of the New Trump Mark, if required by Licensor. The remedy provided in this paragraph shall be the sole and entire remedy of Licensee. However, Licensor shall not be responsible for any special, consequential or exemplary damages or projected lost sales or profit of Licensee or other costs, losses or expenditures of Licensee. Licensee shall promptly notify Licensor of any marks used by third parties that may be confusingly similar or otherwise damaging to the New Trump Mark, but shall take no other action of any kind with respect thereto, except by express prior written authorization of Licensor.

(b) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based on use of the New Trump Mark (exclusive of any Approved Design Logos) is instituted against Licensor, Licensor shall have, at Licensor's option, the right to: (i) defend itself against any such action, proceeding or claim; or (ii) enter into any settlement of any such action, proceeding or claim in its sole discretion.

14. Representations and Warranties; Covenants

(a) Licensors represents and warrants to Licensee that:

(i) Licensor has the power and authority and all necessary licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensor of the Agreement does not and will not conflict with, or result in any breach or contravention of any contractual obligation to which Licensor is a party or any order, injunction, writ or decree of any governmental authority to which Licensor or its property is subject or violate any requirement of law.

(iii) Licensor has not granted to any third party any rights inconsistent with the license rights granted to Licensee hereunder.

(iv) This Agreement constitutes a legal, valid and binding obligation of Licensor, enforceable against Licensor in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(v) Licensor shall use its commercially reasonable efforts to protect and maintain in full force and effect, at its expense, (x) the New Trump Mark (exclusive of Approved Logos) in Israel, to the extent Registration has been issued by the ITO; and (y) in the United States, with respect to any registrations with the U.S. Patent and Trademark Office of the same trademark as the New Trump Mark (other than Approved Logos);

(vi) The New Trump Mark is free and clear of any and all liens and other encumbrances and will not be pledged or granted as a security interest during the term of this Agreement unless such pledge or security interest is subject to this Agreement.

(b) Licensee represents and warrants to Licensor that:

(i) Licensee is a duly organized, validly existing and in good standing under the laws of the State of Delaware. Licensee has the power and authority and all licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensee of this Agreement has been duly authorized by all necessary corporate action, and does not and will not contravene the terms of Licensee's charter documents, conflict with, or result in any breach or contravention of, any contractual obligation to which Licensee is a party or any order, injunction, writ or decree of any governmental authority to which Licensee or its property is subject or violate any requirement of law.

(iii) This Agreement constitutes legal, valid and binding obligations of Licensee, enforceable against Licensee in accordance with their respective terms, except as

enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(c) Licensee covenants with, warrants and represents to Licensor as follows

(i) Licensee is not now, nor shall it be at any time during the Term, an individual, corporation, partnership, joint venture, trust, trustee, limited liability company, unincorporated organization, real estate investment trust or any other form of entity (collectively, a "Person,") with whom a United States citizen or entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise. Neither Licensee nor any Person who owns an interest in Licensee is now nor shall be at any time during the Term a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.C. 5312 (a) (z) as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC or otherwise.

(ii) Licensee has taken, and shall continue to take during the Term, such measures as are required by applicable law to assure that the funds paid to Licensor hereunder, are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. Licensee is, and during the Term will be, in compliance with any and all applicable provisions of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sanctions 1956 and 1957.

15. **Insurance.** All insurance coverage shall be subject to Licensor's review and reasonable approval and shall include the following:

(a) **Prior to Commencing Construction:**

(i) Licensee's Contractors shall provide evidence of a Contractors All-Risk Policy providing Builders' Risk Coverage on a Completed Value Form and Third Party Liability with limits of \$100,000,000.

(ii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(iii) Licensee shall cause the Architect and Engineers to obtain and maintain Architect's and Engineer's Professional Liability Insurance during the period commencing on the date of the Architect's Agreement and expiring no earlier than twenty-four (24) months after the substantial completion of the Building. Such insurance shall be in an amount equal to at least \$5,000,000 per claim.

(b) **Post Construction of the Building:**

(i) **Special Perils Insurance:** Licensee shall maintain property insurance against all risks of loss to the Property customarily covered by so-called "All Risk" or "Special Perils Form" policies which shall include the following perils: building collapse, fire, flood, hurricane, lightning, malicious mischief, subsidence, terrorism, vandalism, loss of rents, water damage, windstorm, additional expense of demolition and increased costs of construction, including, without limitation, increased costs that arise from any changes in laws or other legal requirements with respect to such on restoration in a minimum amount of \$10,000,000; at least one hundred (100%) percent of the replacement cost value of the Improvements; and all tenant improvements and betterments that any lease requires.

(ii) **Liability Insurance:** Licensee shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall provide coverage of at least \$50,000,000 per occurrence and \$50,000,000 in the annual aggregate, per location. If any Liability Insurance also covers other location(s) with a shared aggregate limit, then the minimum Liability Insurance shall be increased to \$50,000,000. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability (including, without limitation, any liability assumed under any leases), and products and completed operations. All Liability Insurance shall name the Indemnified Parties as "Additional Insureds".

(iii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(c) Evidence, acceptable to Licensor, of the existence of all such insurance shall be given to Licensor at least every six (6) months during the Term hereof.

16. **Notices.** Any notice, election, request or demand which by any provision of this Agreement is required or permitted to be given or served hereunder shall be in writing and shall be given or served by (i) hand delivery against receipt; or (ii) by any nationally recognized overnight courier service providing evidence of the date of delivery; or (iii) by certified mail

return receipt requested, postage prepaid; or (iv) by facsimile transmission, provided it is also concurrently sent by mail as provided in (iii) above, in each case addressed to:

(a) Licensee:

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, Florida 33137
Attn: Sharon Christenbury, Esq.
Fax: 305-573-2315

with a copy to:

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

(b) Licensor:

Trump Marks LLC
c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022
Attention: Donald J. Trump
President
Fax: (212) 755-3230

With a copy to:

The Trump Organization LLC
725 Fifth Avenue
New York, New York 10022
Attention: Bernard R. Diamond
Executive Vice President and General Counsel
Fax: (212) 317-0037

or to such other address or addresses, or such other persons, as a party shall from time to time designate by notice given and delivered as aforesaid. Any notice shall be deemed to have been rendered or given: (w) on the date hand delivered (or when delivery is refused), unless such hand delivery was not on a Business Day (as herein defined) or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (x) on the date delivered by a courier service (or when delivery is refused), unless such delivery was not on a Business Day or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (y) three (3)

Business Days from the date deposited in the mail, if mailed as aforesaid; and (z) the date sent by facsimile transmission, provided a copy is concurrently sent in the manner provided in subsection (ii) above. For the purposes of this Paragraph 16, a "Business Day" shall mean a day on which business is transacted by the Bank of Israel.

17. Miscellaneous

(a) This Agreement shall be governed, both as to interpretation and enforcement, by the laws of the State of New York and, as necessary, in the courts in that State, without regard to any principles of conflicts of law. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the federal court or state court located in the County of New York in the State of New York, and each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or thereafter have to the laying of the venue of any such suit, action or proceeding in any such court of that any such suit, action or proceeding brought in any such court has been brought in an inconvenient form. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. The parties acknowledge that the courts of the State of New York are a convenient forum for a resolution of any disputes hereunder. Notwithstanding the foregoing, but in addition to the rights provided above, Licensor shall have the right, in its sole discretion, to apply for injunctive relief against Licensee in the courts of Israel and the courts of Israel shall have jurisdiction with respect thereto.

(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

(c) If any provision hereof, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remaining provision herein, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

(d) This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended except by an instrument in writing signed by a Licensor and Licensee. Failure of a party hereto to complain of any act, omission, course of action, or continued acts or omissions, no matter how long such may continue, shall not be deemed a waiver by said party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waiving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or a consent to any subsequent breach of this Agreement.

(e) Licensor and Licensee covenant and agree that, without the written consent of the other Party, unless, as specifically provided herein, as may be required by law, or in an action or proceeding to enforce this Agreement, they will not, under any circumstances,

disclose or permit to be disclosed the existence of this Agreement or any of its contents to any persons or entities for any purpose whatsoever, other than solely to their respective shareholders, directors, members, officers and other employees, attorneys, accountants, banks, lenders, (collectively, "Affiliated Parties"), in each such case, on a "need to know basis." All Affiliated Parties shall be deemed bound by the provisions of this Paragraph 17(e). In connection with any such permitted disclosure to any Affiliated Parties, Licensor and Licensee, as applicable, shall be liable to the other Party for the acts or omissions of their Affiliated Parties that are in violation of this Paragraph 17(e).

(f) Notwithstanding anything to the contrary contained herein, including but not limited to the provisions of Paragraph 3 hereof, Licensor shall not be responsible for and shall have no liability to Licensee or to any third parties for, any design, construction, repair, or operation, means, methods, techniques, sequences and procedures, or for security or safety precautions and programs, employed by or on behalf of Licensee with respect to the design, construction, repair, or operation of the Tower Property. It is further understood and agreed by Licensee that Licensor is not an architect, engineer, contractor, or other professional licensed by any state, city or municipal authority or any department or agency of any of the foregoing, and Licensor shall provide no services to Licensee in such capacity and shall have no liability to Licensee or to any third party as such. Any reviews, recommendations, approvals, and advice to be furnished by Licensor under this Agreement shall not be deemed to be warranties or guarantees or constitute the performance of professional services as aforesaid.

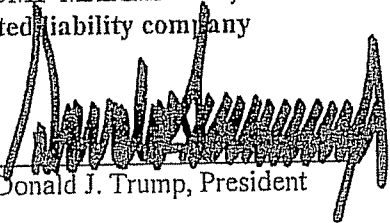
(g) The Recitals set forth above are incorporated herein as if set forth in full.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement which shall be effective as of the date first set forth above.

LICENSOR:

**TRUMP MARKS LLC, a Delaware
limited liability company**

By: 
Donald J. Trump, President

LICENSEE:

**CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company**

By: Crescent Heights Diamond Holdings, LLC,
a Delaware limited liability company
Its managing Member

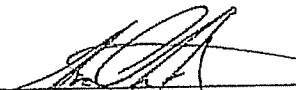

Name: Sharon Christenbury
Title: Vice President

EXHIBIT A

ROYALTIES

1. In consideration for Licensor's execution and delivery of this Agreement and the rights granted to Licensee hereunder, Licensee shall pay to Licensor amounts (singularly, the "Royalty" and collectively, the "Royalties") equal to the sum of:
 - (a) \$1,000,000.00 (U.S.), (the "Initial Payment") which shall be non-refundable and paid to Licensor on the date that Licensee shall be issued the initial construction permit for the commencement of construction of the Building, other than permits for demolition required under a pre-development loan, if any.
 - (b) An amount (the "Residential Incentive") equal to twenty-five (25%) percent of the amount by which the average of the U.S. dollar aggregate sales prices, including upgrading, for all units in the Residential Component that are offered for sale to the public (which shall not be less than ninety-five (95%) percent of all units in the Residential Component) equals or exceeds \$550.00 (U.S.) per "Residential Square Foot" (as herein defined), net of any applicable value added tax ("VAT") that is added to the purchase price; and
 - (c) An amount (the "Non-Residential Incentive") equal to ten (10%) percent of the sales price, net of any VAT, for each Storage Space, Garage Space and unit of the Retail Component (collectively, "Non-Residential Portions"); and
 - (d) An amount (the "Rental Incentive") equal to ten (10%) percent of the gross rental payments received by Licensee for residential units in the Residential Component or retail units (or portions thereof) in the Retail Component or for Storage Space or Garage Space, in each case less only any common area costs, including common utilities, taxes and operating expenses and other similar items that are passed through to the tenants, without premium or override added by Licensee.
 - (e) For the purposes of this Exhibit A, "Residential Square Foot" shall mean the area within each unit that is capable of being air-conditioned. In the event the Parties shall be required to utilize square meters as opposed to Residential Square Feet, as the appropriate measurement for purposes of this Exhibit A, then the Parties agree that each square meter shall equal 10.70391 square feet.
2.
 - (a) The Residential Incentive shall be computed and paid to Licensor (the "Interim Residential Payment"), less the amount of the Initial Payment, on the date upon which possession of eighty-five (85%) percent of the Residential Component Units that are offered for sale to the public have been delivered to the purchasers.

Upon the delivery of possession of the last of the Residential Component Units that are offered for sale to the public, Licensor and Licensee shall recompute the amount of the Residential Incentive for all Residential Component Units (the "Final Residential Computation"). If the Final Residential Computation is greater than the sum of all Interim Residential Payments, the positive difference shall be paid by Licensee to Licensor within ten (10) days of such computation. If the Final Residential Computation is less than the sum of the Interim Residential Payments, the difference shall be paid by Licensor to Licensee within ten (10) days following such computation.

- (b) The Non-Residential Incentive shall be paid to Licensor within five (5) days of Licensee's receipt of payment from the applicable purchasers.
 - (c) The Rental Incentive shall be paid to Licensor quarter annually in arrears with respect to each lease in effect during such quarter-annual period.
3. Licensor or its authorized representatives will have the right to inspect, copy and audit at reasonable times (but not more than twice during any calendar year), and upon reasonable advance notice to Licensee, both during and after the Term, such original books, records, purchase contracts, leases and other documents that serve as the basis for the determination of the Sales Royalties and the Royalties. Licensor agrees that the information contained in Licensee's books and records will be subject to the confidentiality provisions of paragraph 17(e) hereof. Any inspection or audit will be paid for by Licensor. However, in the event that any inspection or audit shows that Licensee has under-reported the Sales Royalties or the Royalties by two (2%) percent or more for any given period, then Licensee shall pay to Licensor within fifteen (15) days after receipt of the audit report, the deficiency in the Sales Royalties or Royalties as the case may be, together with interest thereon at the rate of nine (9%) percent per annum from the original due date to the date of payment; the actual cost of such inspection or audit and other reasonable costs incurred by Licensor. Within ten (10) days following the expiration of each month of the Term Licensee shall provide to Licensor, in form and content approved by Licensor, a report as to all residential and retail sales and leasing, including parking and storage, that occurred in the immediately preceding month.
 4. In the event that any agreement for the sale or lease of any part of the Tower Property is set forth in New Israel Shekels, then for the purposes of calculating the Sales Royalties or the Royalties, the sales price (inclusive of all upgrades) and all rents shall be calculated according to the "representative rate" of the U.S. dollar, published by the Bank of Israel, as of the date of the execution of the sales or lease agreement.
 5. All definitions used in this Agreement, to which this Exhibit "A" is an exhibit, shall be deemed incorporated herein.

EXHIBIT B

POWER OF ATTORNEY

(follows this cover page)

IRREVOCABLE POWER OF ATTORNEY

We, the undersigned, CRESCENT HEIGHTS DIAMOND, LLC of 25 Broad Street, New York, New York 10004, do hereby appoint Advocates Isaac Molho and/or Orrin Persky and/or David N. Shimron and/or Jakob Melcer and/or Michal Arlosoroff and/or Dov Abramowitz and/or Shai Ganor and/or Michael Rabello and/or Michal Shur-Ofry and/or Jonathan Friedland and/or Tal Ranel-Cohen and/or Shlomit Agmon and/or Gil Ephrati and/or Raanan Persky and/or Orna Gabay and/or Orit Malka and/or Yitzchak Goldstein and/or Rachel Shay and/or Judy Amidor and/or Eyal Zalikha and/or Aharon Illouz and/or Roman Kogan and/or Inbal David, of Technology Park, Manahat, Jerusalem, Israel, jointly and severally (hereinafter: "Our Attorneys") to act jointly or severally as our true and lawful attorney or attorneys in fact and at law to act in our name and place and to do all that is necessary to CANCEL ANY REGISTRATION OF A TRADEMARK LICENSE(s), which may be registered with the Israeli Trademark Registrar, referring to trademark(s)/trademark application(s) in the name of Donald J. Trump and/or Trump Marks LLC., in which our name shall appear as licensee ("hereafter: Cancellation of Trademark License Registration")

Without derogating from the generality of the above, Our Attorneys shall be entitled to do the following for the above purpose:

1. To appear on our behalf and in our stead before any person, authority, institution, or office whether governmental, municipal, public or private—including, but not limited to, the Israeli Trademark Registrar.
2. To sign, execute, deliver, and acknowledge on our behalf and stead all requests, declarations, applications, forms, notices and other documents which shall be required for the purpose of Cancellation of Trademark License Registration.
3. To pay, on our behalf and stead and at our expense, all payments of any kind whatsoever for the purpose of Cancellation of Trademark License Registration.
4. This Power of Attorney shall be interpreted in the broadest manner so that our Attorney shall be able to, on our behalf and stead, execute any action that we ourselves and/or a person/persons acting on our behalf are legally entitled to do for the purpose of Cancellation of Trademark License Registration.
5. Any act executed and/or caused to be carried out by Our Attorney(s), on our behalf, in respect to this Power of Attorney, shall obligate us and our legal successors.
6. Since third party rights are dependent on this Power of Attorney, it shall be irrevocable, and we shall not be able to cancel it or change it. Furthermore, this Power of Attorney shall remain valid even if we become bankrupt, or enter into liquidation and/or any similar

proceedings, and shall bind our liquidators, trustees, receivers, and any other legal successors in title.

IN WITNESS WHEREOF, we have signed our name to this Power of Attorney specifically designated for the aforementioned purposes on this _____ day of May 2006.

CRESCENT HEIGHTS DIAMOND, LLC

By its authorized signatory:

Name:
Title:

Certification of Attorney:

I, the undersigned _____, of _____ as legal counsel to _____, hereby certify that the above are authorized signatories on behalf of _____ and that the signatures hereinabove duly bind _____.

Signature: _____

Name: _____, Esq.

Date: _____

SIGNATURE TO BE NOTARIZED AND AUTHENTICATED BY APOSTILLE

EXHIBIT C

THE RESTRICTED AREA

(follows this cover page)

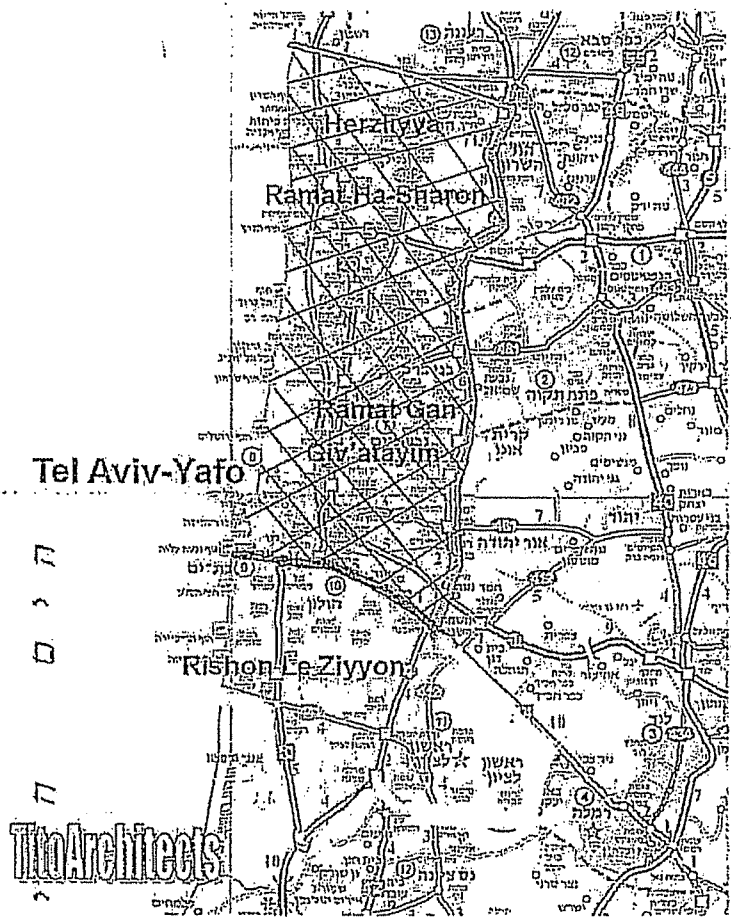


EXHIBIT C
THE RESTRICTED AREA
(The Restricted Area is crossed hatched)

Exhibit B

Trump Marks LLC

c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022

Bernard R. Diamond
Executive Vice President
& General Counsel
Direct dial (212) 715-7288
Direct fax (212) 317-0037
bdiamond@trumporg.com

Via Certified Mail, RRR, Facsimile
and Federal Express

August 2, 2007

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, FL 33137
Attention: Sharon Christenbury, Esq.
Fax:: 305-573-2315

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

Re: License Agreement ("License Agreement") dated May 23, 2006 between Trump Marks LLC, as Licensor and Crescent Heights Diamond, LLC, as Licensee

Dear Ms. Christenbury:

Reference is made to the License Agreement.

The capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the License Agreement.

As I am sure you are well aware, since the inception of the License Agreement, the well-publicized association of the "Trump" name with the anticipated "Tower Property" (as defined in the License Agreement) has generated intense interest among potential purchasers, investors, lenders and the general public, which, in turn, has led to a dramatic appreciation in the value of the Land.

It has come to the Licensor's attention that the Licensee has either sold the Land or is entertaining competing offers for the sale of the Land. By its actions the Licensee obviously seeks to profit handsomely from the association of the "Trump" name with the Land. Notably, in several recent conversations between senior representatives of the Licensee and the Licensor, the Licensee failed to disclose to the Licensor its aforesaid actions.

Sharon Christenbury
August 2, 2007
Page 2

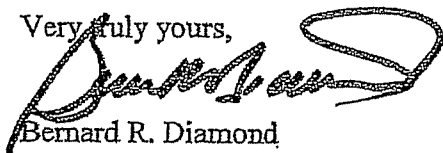
I remind you that among the numerous obligations of the Licensee under the License Agreement (and the inducement for the Licensor to execute and deliver the License Agreement to the Licensee) is the Licensee's covenant and agreement, among others, "...to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property" under the Trump brand.

Please be advised that any sale or other disposition of the Land by the Licensee, without the consent of the Licensor, will thwart the intent and purpose of the License Agreement to the Licensor's financial detriment, denying the Licensor the right to receive many millions of dollars in "Royalties", in violation of the License Agreement.

Any effort by the Licensee to assign the License Agreement to a purchaser of the Land, without the Licensor's consent, will constitute a separate material default by the Licensee under the License Agreement. In addition, the disassociation of the Trump name from the Tower Property as a result of any such unapproved sale, after the public acclaim that has resulted by reason of such association, will substantially damage the Trump name and reputation on a world-wide basis, for which the Licensor will hold the Licensee fully responsible.

I trust you will be guided accordingly.

Very truly yours,



Bernard R. Diamond

BRD: mgs

cc: Donald J. Trump
Donald J. Trump, Jr.
Ivanka Trump
Eric Trump
Jay Goldberg, Esq. - *not sent.*

Exhibit C

Bernie Diamond

From: Bruce Menin [bmenin@crescentheights.com]
Sent: Wednesday, August 15, 2007 11:05 PM
To: Ivanka Trump
Cc: Donald Trump Jr.

Hi there,

I forgot to mention today that Mayor Bloomberg is coming to our home in the Hamptons on Saturday night the 25th of August for a World Trade Center Memorial Foundation event we are hosting. Ivanka, I know you mentioned you are out sometimes and if you would like to come, please do, without any obligation to give of course. It's from 5 to 7. If by chance Don or Eric are out please stop by too if you like.

I don't have Eric's email so please forward if you think he might have an interest.

Good seeing you all and I'm glad we cleared the air in person. We will, as always, keep you advised of new deals that come up that might be of interest as we always have you guys in our thoughts in terms of promoting the brand.

Best,

Bruce

Bruce A. Menin
Managing Principal
CRESCENT HEIGHTS OF AMERICA

Winner 2006 "Freddie Mac Multifamily Development Firm of the Year Award" by the National Association of Homebuilders

Phone (212) 742-2126
(631) 537-4690

Fax (212) 742-2248
(631) 537-4691

bmenin@crescentheights.com
www.crescentheights.com

Exhibit D

Bernie Diamond

From: Bruce Menin [bmenin@crescentheights.com]

Sent: Thursday, November 29, 2007 12:06 PM

To: Donald Trump Jr.; Ivanka Trump

Hi Don and Ivanka,

As you may know, we have essentially completed the sales office (last stages) for Trump Israel. However, while this has been happening, we have been approached by different entities to sell the property as we discussed when we met with your Dad. While the Israeli residential market is strong, we cannot get the 100% residential zoning as you know. So we remain open to selling if approached.

We are currently negotiating a few offers and if we sign we will let you know. And even if we do, we have no idea whether the buyer can and will close, and so we will not stop our continuing efforts on the sales office in case they don't. As we mentioned when we met, if we do sell, although we have no obligation to do so, we are willing to sit down and figure out a payment to the Trump Organization and a transfer of the license to our other property in Tel Aviv, of course subject to your approving it. Anyway, we didn't want you to hear anything from the grapevine as rumors are circulating.

I realize it's the holiday's – I will be in Miami next week for Art Basel, but we could meet to discuss any other time at your convenience if you and your Dad so desire.

Thanks and regards!

Best,

Bruce

Bruce A. Menin
Principal
CRESCENT HEIGHTS OF AMERICA

Phone (212) 742-2126

(631) 537-4690

Fax (212) 742-2248

(631) 537-4691

bmenin@crescentheights.com

www.crescentheights.com

Exhibit E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
TRUMP MARKS LLC,

Plaintiff,

Index No.

-against-

VERIFIED COMPLAINT

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each said
individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKOWN INDIVIDUALS
AND/OR UNKNOWN ENTITIES CONSTITUTING THE
REMAINING MEMBERS OF CRESCENT HEIGHTS
DIAMOND, LLC,

Defendants.

-----X
Plaintiff, Trump Marks LLC (“Trump Marks” or “Plaintiff”), by its attorneys, Meister
Seelig & Fein LLP, as and for its verified complaint (the “Complaint”) against defendants
Crescent Heights Diamond, LLC (“Crescent”), Sonny Kahn (“Kahn”), Russell W. Galbut
(“Galbut”), Bruce A. Menin (“Menin,” and, together with Kahn and Galbut, collectively, the
“Named Members”), and Those Unknown Individuals and/or Entities Constituting the remaining
members of Crescent Heights Diamond, LLC (collectively the “Unknown Members”), alleges as
follows:

THE PARTIES

1. Plaintiff Trump Marks LLC is a Delaware Limited Liability Company with
its principal place of business at Trump Tower, 725 Fifth Avenue, New York, New York 10022.

2. Plaintiff, controls and is in the business of licensing, certain United States Trademarks (collectively, the "Trump Trademarks") covering real estate and related services and other rights, in the name, trademark, service mark, designation, and identification "TRUMP."

3. The Trump Trademarks were registered and are owned by Donald J. Trump, a world-renowned and preeminent builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields.

4. Defendant Crescent is a Delaware Limited Liability Company with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137.

5. Defendant Crescent, along with its affiliate, Crescent Heights of America, LLC, are engaged in the business of, among other things, building and developing first class residential condominium properties throughout the world.

6. Defendant Sonny Kahn is an individual having an address at 5940 North Bay Road, Miami Beach, Florida.

7. Defendant Kahn, on information and belief, is now a member of the defendant Crescent and was a member of Crescent in January 2008.

8. Defendant Russell W. Galbut is an individual having an address at 5225 Collins Avenue PH-8, Miami Beach, Florida.

9. Defendant Galbut, on information and belief, is now a member of defendant Crescent and was a member of Crescent in January 2008.

10. Defendant Bruce A. Menin is an individual having an address at 71 Townline Road, Wainscott, New York.

11. Defendant Menin, on information and belief, is now a member of defendant Crescent and was a member of Crescent on January 2008.

12. The Unknown Members, designated as such pursuant to CPLR Section 1024, are those remaining individuals and/or entities, beyond the Named Members, who now own a membership interest in defendant Crescent and owned such membership interest in January 2008.

JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in this court pursuant to Section 17(a) of the agreement giving rise to this action (described in paragraph 14 below). Under Section 17(a) of said agreement, the parties specifically agreed and consented to any suit, action or proceeding arising out of or in connection with a dispute under said agreement being brought exclusively in a Federal Court or New York State Court located in the State of New York, New York County, and irrevocably waived any objection to venue in any such court, and any claim that any such action brought in any such court has been brought in an inconvenient forum.

BACKGROUND

14. On or about May 23, 2006, Plaintiff and defendant Crescent entered into a License Agreement (the "License Agreement") pursuant to which Plaintiff licensed to defendant Crescent the right to use the name "Trump Tower" together with an associated approved logo (collectively, the "Licensed Mark"), in connection with defendant Crescent's design, construction and marketing of condominium units in what was planned to be the tallest structure in Israel, a 70 story first class residential condominium property containing approximately 786,000 square feet, including residential and retail space (the "Tower Property"), which was to

be built by defendant Crescent on certain parcels of land then owned or to be acquired by defendant Crescent, located in Ramat Gan, Israel, to wit: Parcel 233 of block 6128, having a registered area of 547 square meters, parcel 476 of block 6128, having a registered area of 2,047 square meters, parcel 468 of block 6128, having a registered area of 9,249 square meters, and parcel 47 of block 6128, having a registered area 2,961 square meters (collectively, the "Land").

15. Effective May 23, 2006, Plaintiff and defendant Crescent entered into a First Amendment to License Agreement (the "First Amendment"), which, among other things, changed the Licensed Mark from "Trump Tower" to "Trump Plaza." A true and correct copy of the License Agreement and the First Amendment are collectively annexed hereto and made a part hereof as Exhibit A.

16. Pursuant to Section 5 of the License Agreement, and Exhibit A thereto, defendant Crescent was required to pay Plaintiff Royalties in connection with the sale of the condominium units at the Tower Property at a rate equal to 25% of the sale price per square foot for such condominium units in excess of \$550 (U.S.), net of any value added tax ("VAT"), including a non-refundable initial Royalty payment of \$1,000,000 (U.S.).

17. On or about April 30, 2007, defendant Crescent acquired title to all of the constituent parcels constituting the Land at a cost of approximately \$44 million (U.S.).

18. Plaintiff has complied with all of its obligations under the License Agreement.

19. Specifically, as required by the License Agreement, Plaintiff registered the Licensed Mark with the Israeli Trademarks Office in or about May, 2006.

20. Additionally, at the request of defendants, Plaintiff caused Donald J. Trump to promote, and integrally associate himself with, the Land and the Tower Property, through,

among other things, Mr. Trump acting as Keynote Speaker, via live satellite video feed, in the Israel Business Conference held on December 9-11, 2006, organized by Israel's leading business newspaper, Globes. Further, Mr. Trump's association with the Tower Property elicited substantial coverage from the press, and consequently promoted and enhanced the value of the Land.

21. In or about August 1, 2007, Plaintiff became aware that defendant Crescent was engaged in negotiations to sell the Land to a third party developer and thereby abandon and render impossible the performance of its obligations under the License Agreement, including but not limited to Crescent's obligation under Section 3(a) of the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property.

22. By letter dated August 2, 2007 (copy attached as Exhibit B hereto), Plaintiff warned defendant Crescent that a sale of the Land to a third party would result in defendant Crescent defaulting on its obligations under the License Agreement, and would cause substantial damage to Plaintiff, by reason of the failure of Plaintiffs to receive substantial Royalties, defendant Crescent's unjust enrichment and the severe reputational damage Plaintiff's brand would suffer from Donald J. Trump's abrupt and forced dissociation from the Tower Property project.

23. Defendant Crescent nevertheless went forward with and consummated the sale of the Land to a third party, Azorim Investment, Development and Construction Ltd. ("Azorim").

24. Upon information and belief, in or about January, 2008, defendant Crescent consummated the sale of the Land to Azorim for approximately \$80.2 Million (U.S.).

25. Defendant Crescent contends that the performance of its obligations under the License Agreement, including but not limited to its obligation under Section 3(a) thereof to design and build the Tower Property, was excused because, according to defendant Crescent, it was unable to procure the necessary approvals to permit the construction of the Tower Property, as a purely residential and retail property – as opposed to a mixed residential, retail and office (or other use) project – from the relevant Israeli authorities.

26. However, there is no provision in the License Agreement which states that the Tower Property, as ultimately approved and permitted by the relevant Israeli authorities, must not contain any office or other type of space (beyond residential or retail space).

27. Further, defendant Crescent knew, prior to entering into the License Agreement, that the zoning laws applicable to Land did not permit the Tower Property to be designed and approved as a purely residential and retail condominium tower as of right, without certain permits, approvals and/or variances being granted by the relevant Israeli authorities.

28. Notwithstanding defendant Crescent's advance knowledge that permits, approvals and/or variances were required to be procured from the relevant Israeli authorities in order for the Tower Property to be designed and constructed, defendant Crescent executed and delivered to Plaintiff the License Agreement, which contains, at Section 3(a) thereof, the unqualified obligation of defendant Crescent Heights to design and construct the Tower Property. There is no clause in the License Agreement which permits defendant Crescent to avoid its unconditional obligation under Section 3(a) of the License Agreement to design and build the Tower Project by selling the Land in the event the aforesaid permits, approvals and/or variances were not issued by the relevant Israeli authorities.

29. By executing and delivering the License Agreement as it was drafted, the parties evidenced their mutual agreement to allocate the risk of failing to procure the needed permits, approval and/or variances to and upon defendant Crescent.

30. At no time did Defendants consult with Plaintiff as to their alleged difficulties in obtaining approvals and entitlements for a purely residential and retail project, or otherwise seek Plaintiff's view or assistance as to how best to proceed.

31. In any event, defendants contracted to sell the Land in December, 2007, having purchased the Land only eight (8) months previously, and therefore defendants did not make bona fide efforts to obtain the necessary permits, approvals and/or variances from the relevant Israeli authorities.

32. Defendants were required under the License Agreement to construct the Tower Project so long as it included residential and retail space, even if it included office or other type of space, and to pay Plaintiff the Royalties due on the sale of condominium units therein.

33. By selling the Land to a third party after being warned by Plaintiff that doing so would result in defendant Crescent's breach of the License Agreement, defendant Crescent did so at its peril, with full knowledge of and assuming the risk of the liabilities it would thereby incur to Plaintiff, for the damages Plaintiff would sustain from defendant Crescent's resultant breach of the License Agreement.

34. By reason of the foregoing, defendant Crescent has breached and defaulted upon its obligations under the License Agreement and is liable and accountable to Plaintiff in damages.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract against Defendant Crescent)

35. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

36. The License Agreement constitutes a valid and enforceable contract between Plaintiff and defendant Crescent.

37. Plaintiff has fully performed all of its obligations under the License Agreement.

38. Defendant Crescent has breached the License Agreement by failing to honor and perform its obligations and promises thereunder, including failing to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement.

39. As a consequence of defendant Crescent's breach of the License Agreement, Plaintiff has been damaged in an amount to be determined at trial, such amount being not less than \$45,000,000 (U.S.), plus interest and costs.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant Crescent)

40. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

41. Pursuant to Section 17(a) of the License Agreement, the parties agreed that the License-Agreement would be governed by the laws of the State of New York. Under applicable law, the License Agreement includes an implied covenant of good faith and fair dealing.

42. Defendant Crescent breached the implied covenant of good faith and fair dealing by selling the Land to a third party without having built the Tower Property, thereby frustrating

the purpose of the License Agreement and depriving Plaintiff of the benefit of its bargain, and reaping a windfall profit for itself in excess of \$36 Million (U.S.)

43. As a direct and proximate result of the foregoing breach of the implied covenant of good faith and fair dealing, Plaintiff has been harmed in an amount to be determined at trial, such amount being not less than \$45,000,000 (U.S.), plus interest and costs.

AS AND FOR A THIRD CAUSE OF ACTION
(Indemnification against Defendant Crescent)

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

45. Pursuant to Section 11 of the License Agreement, defendant Crescent expressly agreed to indemnify and hold harmless Plaintiff from and against any and all losses suffered by defendant Crescent arising out of a breach by defendant Crescent of any of its obligations, or a default by defendant Crescent under, the License Agreement.

46. By failing to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent has breached the express promises made by it and thereby defaulted under the License Agreement.

47. In consequence, defendant Crescent is liable to Plaintiff for the losses, including reasonable attorneys' fees and disbursements, sustained by Plaintiff in bringing this action, which seeks redress for defendant Crescent's breach of and default under the License Agreement.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment against all Defendants)

48. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

49. By virtue of defendant Crescent's receiving from Plaintiff the benefit of Donald J. Trump's world renowned reputation as the preeminent developer of luxury residential properties, and associated expertise, contacts, skills, knowledge and information, defendant Crescent, through Donald J. Trump's association with and promotion of the Land and Tower Project, has been substantially and unjustly enriched.

50. Specifically, by virtue of Donald J. Trump's association with and promotion of the Land and Tower Project, including the importance to the worldwide market of Mr. Trump's identifying the Tel Aviv/Ramat market in general, and the Land as a prime development site in said market, in particular, defendant Crescent was able to, and did in fact, sell the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), after having acquired the Land less than eight (8) months previously for only \$44 Million (U.S.), which resulted in a windfall profit to defendants of approximately \$36,000,000.

51. The real estate market in Ramat Gan, Israel did not appreciate materially during the brief period defendant Crescent owned the Land (April to December, 2007) and certainly did not appreciate during that period to such a degree that the market value of the Land (to which defendant Crescent added no value as no entitlements were received) increased from \$44 Million to \$80.2 Million in less than eight months (April to December, 2007).

52. Defendants contend that because the License Agreement does not require the payment of any Royalty or other consideration to Plaintiff upon a sale of Land and because

(defendants contend) the requisite approvals and permits for the construction of the Town Property could not be procured from the relevant Israeli authorities, the License Agreement has not been breached.

53. By reason of the foregoing, equity and good conscience require that defendants make restitution to Plaintiff in an amount equal to the value of the benefit defendants unjustly received.

54. By reason of the foregoing, defendants have been unjustly enriched by virtue of defendant Crescent's sale of the Land (which it had purchased in 2007 for approximately \$44 million) for approximately \$80.2 million in 2007 (with a closing in January, 2008). This sale resulted in a windfall profit to defendant Crescent of approximately \$36,000,000, which windfall profit, on information and belief was thereafter distributed to the Named Members and Unknown Members. Further, said windfall profit was realized by virtue of the world renowned reputation of Donald J. Trump as the preeminent developer of luxury residential properties, and the associated expertise, contacts, skills, knowledge and confidential information of Plaintiff.

55. Plaintiff is therefore entitled to judgment requiring defendants to make restitution to Plaintiff of the windfall profit realized by defendant Crescent upon the sale of the Land, and thereafter, on information and belief, distributed to the Named Members and Unknown Members, in an amount to be determined by the Court, such amount being approximately \$36,000,000 plus interest and costs.

AS AND FOR A FIFTH CAUSE OF ACTION
(Fraudulent Conveyance pursuant to New York
Debtor and Creditor Law §§ 273-275 against all Defendants)

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

57. On or about May 23, 2006, Plaintiff and defendant Crescent entered into the License Agreement.

58. In or about January, 2008, in breach of its obligations under the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent sold the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), realizing a windfall profit of approximately \$36 Million (U.S.).

59. Upon information and belief, shortly after receiving the \$80.2 Million (U.S.) of proceeds from the sale of the Land to Azorim, defendant Crescent, a limited liability company, distributed the net proceeds from such sale, including the windfall profits it received on such sale, to the Named Members and the Unknown Members (the "Fraudulent Conveyance").

60. At the time it distributed the net proceeds of the said sale to the Named Members and the Unknown Members, defendant Crescent knew of its liability to Plaintiff for defendant Crescent's breach of the License Agreement, which liability therefore constituted a debt of defendant Crescent antecedent to the aforesaid conveyance of the net proceeds of the sale by defendant Crescent to the Named Members and the Unknown Members.

61. Defendant Crescent received either no consideration or failed to receive fair consideration for the Fraudulent Conveyance to the Named Members and the Unknown Members.

62. The Fraudulent Conveyance was done to delay, hinder and avoid creditors of defendant Crescent.

63. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration and rendered defendant Crescent insolvent or was made at a time when defendant Crescent was insolvent, in violation of Section 273 of the New York Debtor and Creditor Law.

64. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration and left defendant Crescent with an unreasonably small amount of capital with which to operate, in violation of Section 274 of the New York Debtor and Creditor Law.

65. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration at a time when defendant Crescent intended or believed that it would incur debts beyond its ability to pay them as they matured, in violation of Section 275 of the New York Debtor and Creditor Law.

66. By reason of the foregoing, Plaintiff demands that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received by defendant Crescent from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned by the Named Members and Unknown Members to defendant Crescent so

that it can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action.

AS AND FOR A SIXTH CAUSE OF ACTION
**(Fraudulent Conveyance pursuant to New York
Debtor and Creditor Law § 276 against all Defendants)**

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

68. Upon information and belief, the Fraudulent Conveyance was made by defendant Crescent with the actual intent to hinder, delay or defraud either present or future creditors of defendant Crescent, and did, in fact, hinder, delay and defraud Plaintiff.

69. By reason of the foregoing, Plaintiff demands that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received by defendant Crescent from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned by the Named Members and Unknown Members to defendant Crescent so that it can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action.

AS AND FOR A SEVENTH CAUSE OF ACTION
**(Attorneys' Fees pursuant to New York
Debtor and Creditor Law § 276-a against all Defendants)**

70. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

71. By reason of the foregoing, and pursuant to New York Debtor and Creditor Law Section 276-a, Plaintiff demands judgment against the Defendants for all of the costs and disbursements of this action, including its attorneys' fees herein.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Wrongful Distributions in Violation of Section 18-607 of the Delaware Limited Liability Company Act (or Section 508 of the New York Limited Liability Company Act) against all Defendants)

72. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

73. Defendant Crescent is a limited liability company organized under the Delaware Limited Liability Company Act (the "Act").

74. On or about May 23, 2006, Plaintiff and defendant Crescent entered into the License Agreement.

75. In or about January, 2008, in breach of its obligations under the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent sold the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), realizing a windfall profit of approximately \$36 Million (U.S.).

76. Upon information and belief, shortly after receiving the \$80.2 Million of proceeds from the sale of the Land to Azorim, defendant Crescent, a Delaware limited liability company, distributed the net proceeds from such sale, including the windfall profits it received on such sale, to the Named Members and Unknown Members (the "Fraudulent Conveyance").

77. At the time it distributed the net proceeds of the said sale to the Named Members and Unknown Members, defendant Crescent and said distributees knew of defendant Crescent's liability to Plaintiff for defendant Crescent's breach of the License Agreement, which liability therefore constituted a debt of defendant Crescent antecedent to the aforesaid Fraudulent

Conveyance of the net proceeds of the sale by defendant Crescent to the Named Members and Unknown Members.

78. Defendant Crescent's distribution of the net proceeds of the sale of the Land to the Named Members and Unknown Members was a distribution made in violation of Section 18-607 (a) of the Act (or Section 508 of the New York Limited Liability Company Act, if the Court deems such act applicable), in that, at the time of the distribution, after giving effect to the distribution, all liabilities of defendant Crescent (other than certain liabilities to members and liabilities with respect to non-recourse debt), but including, in particular, its antecedent debt to Plaintiff for damages arising from its breach of the License Agreement, exceeded the fair value of the assets of defendant Crescent.

79. By reason of the terms of the License Agreement and Attorney Diamond's letter of August 2, 2007, among other things, the Named Members and the Unknown Members knew, at the time they received a distribution of the net proceeds of the sale from defendant Crescent, that said distribution violated Section 18-607(a) of the Act (or Section 508 of the New York Limited Liability Company Act, if the Court deems such act applicable), as aforesaid.

80. In consequence, the Named Members and the Unknown Members are liable to defendant Crescent to return the wrongful distributions they received from defendant Crescent of the net proceeds of the sale of the Land to Azorim, and Plaintiff is entitled to a judgment directing that said return be made, so that Plaintiff may have satisfaction of judgment for damages awarded to it in respect of defendant Crescent's breach of the License Agreement and unjust enrichment as alleged herein.


WHEREFORE, Plaintiff seeks judgment:

- (a) On the first cause of action for breach of contract as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$45,000,000, plus interest, costs and reasonable attorneys' fees;
- (b) On the second cause of action for breach of the implied covenant of good faith and fair dealing as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$45,000,000, plus interest, costs and reasonable attorneys' fees;
- (c) On the third cause of action for indemnification as against defendant Crescent, in an amount to be determined at trial, plus interest, costs and reasonable attorneys' fees;
- (d) On the fourth cause of action for unjust enrichment as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$36,000,000, plus interest, costs and reasonable attorneys' fees;
- (e) On the fifth cause of action for fraudulent conveyance as against all defendants pursuant to New York Debtor and Creditor Law Sections 273, 274 and 275, ordering that the conveyances by defendant Crescent to the Named Members and the Unknown Members of the net proceeds received from sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned to defendant Crescent by the Named Members and the Unknown Members, so that defendant Crescent can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action, plus interest, costs and reasonable attorneys' fees;
- (f) On the sixth cause of action for fraudulent conveyance as against all defendants pursuant to Debtor and Creditor Law Section 276, ordering that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned to defendant Crescent by the Named Members and Unknown Members, so that defendant Crescent can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action, plus interest, costs and reasonable attorneys' fees;
- (g) On the seventh cause of action for attorneys' fees pursuant to New York Debtor and Creditor Law Section 276-a as against all defendants, in an amount to be determined at trial, plus interest and costs; and

- (h) On the eighth cause of action for wrongful distributions made in violation of Section 18-607 of the Delaware Limited Liability Company Act and/or Section 508 of the New York Limited Liability Company Act as against all defendants, ordering the Named Members and the Unknown Members to return to defendant Crescent the distributions the former received from the latter in respect of the net proceeds of the sale of the Land, so that Plaintiff may have satisfaction of the judgment awarded to Plaintiff on the first, second, third and fourth causes of action herein.
- (i) All such other and further relief as this Court deems just and equitable.

Dated: New York, New York
May 5, 2008

MEISTER SEELIG & FEIN LLP

By: 

Stephen B. Meister, Esq.

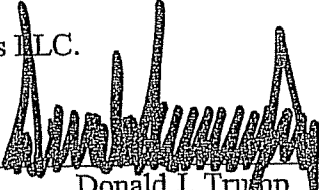
2 Grand Central Tower
140 East 45th Street, 19th Floor
New York, New York 10017
(212) 655-3500
Attorneys for Plaintiff

VERIFICATION

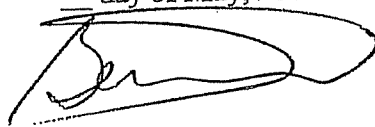
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Donald J. Trump, being duly sworn, deposes and says as follows:

I am a member of Plaintiff Trump Marks LLC. I have read the within Verified Complaint, and the same is true to my knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true. The source of my belief is my personal knowledge of the matters set forth therein, my review of relevant documents and the books and records of Trump Marks LLC.



Donald J. Trump

Sworn to before me this
day of May, 2008


BERNARD R. DIAMOND
Notary Public, State of New York
No. 02D14987017
Qualified in Westchester County
Commission Expires *Sept 30, 2015*

LICENSE AGREEMENT

BETWEEN

TRUMP MARKS LLC

LICENSOR,

AND

CRESCENT HEIGHTS DIAMOND, LLC

LICENSEE

Dated: New York, N.Y.
May 23, 2006

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LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the ^{23rd} day of May, 2006, between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor"), with a principal place of business at 725 Fifth Avenue, New York, New York 10022, and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company, ("Licensee"), with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137. The Licensor and Licensee may hereinafter sometimes be referred to as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Donald J. Trump, a world-renowned builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields, is the owner of certain United States Trademarks covering certain real estate services as well as certain other rights in the name, trademark, service mark, designation, and identification "TRUMP;" and

WHEREAS, pursuant to a certain License and Quality Control Agreement dated as of May 25, 2005, between Trump Marks LP, as licensor and Licensor as licensee, Licensor controls the licensing of the aforesaid Trump trademarks; has the exclusive right to grant the license to Licensee provided herein; and is the proper party to enter into this Agreement; and

WHEREAS, Licensee intends to (i) develop a building (the "Building") on certain land (the "Land") owned or to be acquired by Licensee, in Ramat Gan, Israel, which Land is legally described as: Parcel 233 of block 6128, having a registered area of 547 meters; parcel 476 of block 6128, having a registered area of 2047 meters; parcel 468 of block 6128, having a registered area of 9249 meters; parcel 47 of block 6128, having a registered area of 2961 meters; and all that is built on and attached to the said four parcels (the Land, together with the Building to be erected thereon, collectively the "Tower Property"), which, on completion of construction will include a first-class, luxury residential condominium component, which may include storage spaces (the "Storage Spaces") and garage spaces (the "Garage Spaces") (collectively, the "Residential Component") and, a retail component, which may include one or more restaurant units and one or more retail components of the type commonly located in similar projects, (collectively, the "Retail Component"); (ii) design, develop, construct and operate the Tower Property or portions thereof in the form of condominium ownership; and (iii) market, sell and/or lease the units forming part of the Residential Component and the Retail Component (individually, a "Unit" and collectively, the "Units") to be contained in the Building. All of the foregoing activities recited on subdivisions (i) through (iii) above, inclusive, to be performed in accordance with the "Trump Standard" (as herein defined) so as to maximize the value of the Tower Property for the benefit of Licensee and Licensor; and

WHEREAS, Licensee desires to use the name "Trump Tower"; which, together with any "Approved Logo" (as herein defined) is referred to herein as the "New Trump Mark"; and

WHEREAS, Licensor is willing to grant to Licensee the right to use the New Trump Mark in accordance with and subject to the terms, covenants and provisions of this Agreement.

NOW, THEREFORE, for One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Licensor and Licensee do hereby agree as follows:

1. License; Registration; Licensor Restriction

(a) Promptly after the date hereof, Licensor shall submit the New Trump Mark for registration (the "Registration") with The Israeli Trademarks Office (the "TTO"). Licensee acknowledges and agrees that Licensor shall not be liable or responsible to Licensee for any delay in or limitation imposed upon the New Trump Mark during the Registration process or any refusal by the TTO to register the New Trump Mark, and all of Licensee's obligations hereunder regarding the use of the New Trump Mark, including but not limited to Licensee's payment obligations hereunder shall remain in effect whether or not Registration of the New Trump Mark shall occur. Licensor shall have the right to register this Agreement with the appropriate Israeli authorities.

(b) Licensor hereby grants to Licensee, during the "Term" (as herein defined), a nonexclusive (subject to Section 1(g)), nonassignable (except as provided in Section 12(b) and (c) hereof), nontransferable right, without the right to grant sublicenses, to use the New Trump Mark alone or as part of the Approved Logo(s) solely for the purpose of identifying the Tower Property at its above-mentioned location, subject to all the terms, covenants and provisions of this Agreement. Licensee shall be required to, and hereby agrees to, use the New Trump Mark as the sole identification of the Building during the Term. Licensee shall also have the right to use the New Trump Mark in signage, print medium, television, radio, internet (the "Internet"), and other forms of promotional and publicity materials and facilities, solely with respect to the promotion of the Building, subject to all the terms, covenants and provisions of this Agreement. In connection with Licensee's exercise of the foregoing marketing rights, Licensor reserves the right to prohibit the making of representations on behalf of Licensor or Donald J. Trump, or the use of material which, in the judgment of Licensor, do not accurately reflect facts about Licensor and/or Donald J. Trump.

(c) Licensor hereby grants to Licensee, during the Term, the right to permit Residential Component Unit owners and lessees, and Retail Component Unit owners and lessees (collectively, "Occupants") to use the New Trump Mark solely for the purpose of identifying in advertising and promotion of their Residential and Retail Component Units in connection with offers to sell or lease such Units, and as the address of such Occupants at the Building. However, such right shall not permit the Occupants to use the New Trump Mark as part of the name or identification of such Occupants. Trade names such as "Trump Tower Restaurant" or "The Restaurant at Trump Tower" are not permitted or authorized hereunder. Licensee agrees that the foregoing rights and restrictions governing Licensee's and such Occupants' use of the New Trump Mark, including but not limited to its obligation to comply with the Trump Standard, and Licensor's access to the Building as provided in Paragraph 3(d) hereof, shall be set forth in:

(i) each contract of sale or lease, pursuant to which an Occupant shall acquire or lease a Unit from Licensor; and

(ii) each succeeding contract of sale, lease, or sublease pursuant to which an Occupant shall sell or otherwise transfer or lease its Unit or assign its lease or sublease its Unit; and

(iii) the bylaws of the Building (Takanon Habait Hameshutaf) (the "Bylaws") which shall be registered by Licensee with the Tel Aviv, Israel Land Registry, together with the registration of each purchasing Occupant's ownership of its Unit.

Each such contract of sale, lease, assignment, sublease and the Bylaws, and an English translation of each, shall be subject to the approval of Licensor. Licensee agrees to cooperate fully with, and furnish assistance to Licensor in any action by Licensor required to ensure that any use of the New Trump Mark by the Occupants complies with the terms and conditions of this Agreement.

(d) In connection with its identification and promotion of the Building, Licensee may propose to use certain composite trademark(s) and/or logos in association with and/or incorporating the New Trump Mark, including, but not limited to, a logo that substantially consists of distinctive design elements of the Building, (collectively, the "Proposed Logo" or "Proposed Logos"). Prior to any adoption and/or use of any Proposed Logo, Licensee shall submit a graphical representation of such Proposed Logo to Licensor precisely in the manner which Licensee intends such Proposed Logo to appear in commercial use. Following Licensee's submission of such Proposed Logo to Licensor, Licensor shall review such Proposed Logo within fifteen (15) days of receipt thereof, and if such Proposed Logo meets with Licensor's preliminary approval, Licensor shall commission its Israel trademark counsel to conduct a full trademark search and make an assessment as to the likely registrability and/or availability of such Proposed Logo for use. Licensee shall bear the costs incurred in the trademark clearance assessment of each Proposed Logo. Upon obtaining the assessment of counsel regarding clearance of any Proposed Logo, Licensor shall, in its reasonable discretion, within fifteen (15) days of receipt of counsel's said assessment, determine whether to approve such Proposed Logo. Licensor shall promptly notify Licensee in writing whether or not it is permitted to adopt and/or use any given Proposed Logo. Licensee may submit multiple alternative Proposed Logos at the same time, which shall proceed concurrently through the approval process, subject to the provisions of this Agreement. Licensee shall not adopt and/or use any Proposed Logo unless and until it obtains Licensor's approval, in writing, in the manner set forth in this subparagraph 1(d).

(e) If the Licensor approves any Proposed Logo, such Proposed Logo shall then be referred to as an "Approved Logo." At such time that the Licensor approves any Proposed Logo, in writing, Licensee acknowledges and agrees that Licensor shall own all right, title and interest in and to any and all Approved Logos and that Licensee's sole rights with respect thereto shall be to use such Approved Logos subject to, and in accordance with, the terms, covenants and provisions of this Agreement. If and when any Proposed Logo is approved in writing by Licensor in accordance with the terms of this Agreement, such Approved Logo will be considered as of the date of such approval as a New Trump Mark and will be subject to the terms and conditions of this Agreement. On termination of this Agreement, Licensor shall

assign to Licensee (in a form reasonably acceptable to Licensee) all of Licensor's right, title and interest in and to the Approved Logos adopted and used by Licensee, if any, but only that portion of such Approved Logos (the "Design Logos") that do not contain any element of the name "Trump" or can be readily separated and clearly distinguished from the name "Trump."

(f) Licensor shall file trademark applications for the New Trump Mark (other than Approved Logos), at Licensor's expense, in English and Hebrew, and each Approved Logo, at Licensee's expense, including the expense of any renewals of any such Registration, with the ITO in Classes 36 and 37. Applications for Approved Logos, if approved by the ITO, will be deemed a part of the New Trump Mark.

(g) Provided that Licensee is not in default of this Agreement after any applicable notice and cure period provided herein, and this Agreement is in full force and effect, then:

A. until the first to occur of (i) the date that is forty-two (42) months from execution of this Agreement; and (ii) the date upon which at least ninety (90%) percent of the Units available for sale to the public are subject to binding contracts of sale, Licensor will not license the name "Trump" for a residential condominium building, with or without storage spaces, garage spaces and retail areas, within the area of Tel Aviv, Israel shown cross-hatched on Exhibit C annexed hereto and made a part hereof. (the "Restricted Area"); and

B. until the date that is twelve (12) months from the date hereof, Licensor will not license the name "Trump" for a "Condominium Hotel" (as herein defined).

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" name, other than the New Trump Mark, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that terms is customarily used, or for any other use not expressly prohibited herein, anywhere in Tel Aviv or elsewhere in Israel.

D. For the purposes of this Paragraph 1(g) "Condominium Hotel" shall mean apartment hotels and/or suite hotels and/or apartment buildings (which may be residential condominium buildings) (x) in which the owners have the right to include their apartments or units in a rental program for predominantly transient occupancy, whether short-term, medium-term or long-term, with a majority of the apartments or units of the building anticipated, but not required, to participate in the rental program on a predominantly short-term transient occupancy basis; (y) which provide to such apartment or unit owners services customarily provided by a hotel, such as a registration desk, cleaning services and the like; and (z) which are professionally managed by an affiliate of Licensor or by a third-party manager.

(h) Licensor shall cause Donald J. Trump to make one (1) trip to the Tower Project (the "Trump Appearance"), at Licensee's expense for first class air transportation and first class accommodations and food, for no more than one (1) day of six (6) working hours, for

the promotion of the Tower Project to the public. The Trump Appearance shall occur on a date reasonably acceptable to the Parties, but consistent with Donald J. Trump's professional schedule.

(i) Any Internet website addresses obtained and utilized by Licensee with respect to the promotion of the Tower Property shall be subject to the approval of Licensor in writing, which approval shall not be unreasonably withheld or delayed; and if so approved, shall be issued exclusively in the name of Donald J. Trump, as the owner thereof.

2. Exclusions to License; Use of License

(a) Licensee recognizes and agrees that no rights, other than as expressly provided herein, to use the New Trump Mark are granted hereunder, whether as to activities, products, services, or otherwise. Solely for promotional purposes, Licensee may produce, sell or give away promotional items, décor elements, souvenir products, (e.g. pens, bathroom towels, tumblers and monogrammed clothing) and any items customarily sold in a spa (including but not limited to cosmetics, robes, slippers, and t-shirts, respectively), which bear the New Trump Mark, have been reasonably approved by Licensor as to design, development, marketing and sales, and conform to the Trump Standard. The following merchandising items shall be royalty-free during the term of this Agreement: (i) promotional give-aways, and (ii) any items purchased from Licensor or its designee. As for other merchandising items, including those sold in a sundries store or gift shop or a spa or other portions of the Tower Property, Licensee will pay or will cause any tenant, licensee or other operator thereof to pay, to Licensor royalties in respect of such sales in an amount equal to fifteen percent (15%) of all net sales after deduction of only Israeli Value Added Tax and returns (the "Sales Royalties"). Sale Royalties will be paid to Licensor quarter-annually within thirty (30) days of the close of each quarter. Payment of the Sales Royalties shall be accompanied by Licensee's statement certified by the Chief Financial Officer of Licensee as true and complete (the "Statement") in such detail as Licensor shall reasonably require, with respect to the Sales Royalties provided in such Statement. Licensee shall not have the right to use the New Trump Mark in connection with individual facilities within the Tower Property, or with any products or services sold or offered for sale in the Tower Property or elsewhere, except as provided herein, or if and as may subsequently be agreed to in writing by Licensor in Licensor's sole and absolute discretion.

(b) Licensee also recognizes and agrees that it has no other rights to the use of the name "Trump" other than in respect to the licensed New Trump Mark, and recognizes Licensor's sole and exclusive ownership of all proprietary rights in the name "Trump" and in the New Trump Mark. Licensee will not register nor attempt to register the New Trump Mark or "Trump" or any derivations or phonetic equivalents thereof, as a name, mark or otherwise. Licensee agrees neither to assert any claim to any goodwill, reputation, or ownership of the name "Trump" or in the New Trump Mark nor to contest the validity or ownership of the New Trump Mark. Licensee agrees that it will not do, or permit any act or thing to be done, in derogation of any of the rights of Licensor in connection with Licensee's use of the New Trump Mark either during the term of this Agreement or thereafter and that Licensee will not use the New Trump Mark except as licensed hereunder. Licensee further acknowledges and agrees that any goodwill associated with the use of the New Trump Mark shall inure directly and exclusively to Licensor.

(c) All uses of the New Trump Mark by Licensee shall faithfully reproduce the design and appearance of the New Trump Mark.

(d) At the request of Licensor, Licensee shall include the trademark designation legally required or useful for enforcement (e.g. "TM", "SM" or ®, as applicable) in connection with Licensee's use of the New Trump Mark.

(e) Except as specifically authorized under this Agreement, Licensee shall not use the New Trump Mark in whole or in part on or in connection with any other business and shall not permit or authorize any other person or entity to use the New Trump Marks in any manner.

(f) Licensor shall have the right to review and approve in writing, all promotional materials or any other materials (with an English translation) using the New Trump Mark prior to Licensee's use of such materials. Licensor shall within Licensor's reasonable discretion, review and approve such materials within ten (10) business days of its receipt of such materials; provide however, if Licensor shall fail to approve or shall reject any such submission within such ten (10) business day period and after three (3) days following an additional written notice to Licensor, sent upon the expiration of such ten (10) business day period, such submissions shall be deemed approved by Licensor. Notwithstanding the foregoing, in no event shall Licensee issue a press release concerning Licensor (or Donald J. Trump) without Licensor's prior written approval.

(g) Licensee agrees to ensure that, in such cases as Licensor may require, use or display of the New Trump Marks are in the manner sufficient to indicate that the New Trump Marks are owned by Licensor and are being used under license.

3. Trump Standard; Trump Standard Default; Power of Attorney. As a material inducement for the grant of the license provided herein, Licensee covenants and agrees with Licensor:

(a) to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property, in each case, with the level of quality and luxury associated with the premier, first class mixed-use residential condominium building known as the Akirov Building in Tel Aviv, Israel (the "Signature Property"); and

(b) at all times, to maintain, and ensure by the provisions of the Bylaws, and by each contract for the sale of a Unit and each lease and sublease of a Unit, that Licensee and each Occupant (hereinafter singularly, a "License Beneficiary," and collectively, "License Beneficiaries") maintain standards, with respect to the Tower Property, and the Residential and Retail Components thereof, as the case may be, that are at least equal to those standards of design, development, construction, marketing, sale, equipping, operation, repair and maintenance followed by the Signature Property (for the purposes of this Agreement, such standards as the date hereof, are collectively called the "Trump Standard").

(c) Using its commercially reasonable judgment, Licensor shall be the sole judge of whether a License Beneficiary is maintaining the Trump Standard, and if Licensor, in its

commercially reasonable judgment, determines that the Trump Standard is not being maintained or that a License Beneficiary has breached any other provision of this Agreement relating to the Trump Standard, (collectively, a "Trump Standard Default") Licensor may notify, as applicable, the License Beneficiary thereof in writing (the "Trump Standard Default Notice") and if the License Beneficiary shall fail to fully correct to Licensor's satisfaction any condition or cure any Trump Standard Default identified in the Trump Standard Default Notice, within thirty (30) days of the receipt of such Trump Standard Default Notice, Licensor may immediately terminate this Agreement and all rights licensed hereunder by notifying the License Beneficiary in writing of such termination; provided however, that so long as the Trump Standard Default cannot be cured solely by the payment of money and the License Beneficiary shall have commenced the curing of such Trump Standard Default within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, the License Beneficiary shall have such reasonable additional period of time as shall be reasonably necessary to cure such Trump Standard Default, but in no event more than the shorter of (i) one hundred twenty (120) days, or (ii) the number of days of "Unavoidable Delay" (as herein defined) that the License Beneficiary shall contemporaneously document in writing to Licensor.

(d) Licensor or its representatives shall at all times have access to, and the right to inspect, the Tower Property, interior and exterior (but excluding the interior of non-Licensee or its designees' privately owned units, unless authorized by such unit owners), and the procedures utilized by the License Beneficiaries, in the operation and maintenance of the Residential Component and Retail Component during normal business hours, on not less than twenty-four (24) hours notice, but without unreasonably interfering with the operation of the Tower Property, to confirm License Beneficiaries' compliance with the provisions of this Agreement.

(e) (i) Concurrently with the execution of this Agreement, Licensee shall execute and deliver to Licensor a Power of Attorney (the "Power") in the form and on the terms annexed hereto as Exhibit B and made a part hereof, in form sufficient for registration with the appropriate Israel governmental authority, pursuant to which Licensee irrevocably designates Licensor or its attorneys, as attorney-in-fact for Licensee, to execute and deliver on behalf of Licensee, any such documents as shall be required to cause the registration of this Agreement, as provided in Paragraph 1(a) hereof, to be cancelled in the event that this Agreement expires or is terminated for any reason and Licensee shall fail to commence an action (the "Action") to enjoin or contest the cancellation of the registration of this Agreement within thirty (30) days of such termination. In the event Licensee shall commence an Action, then Licensor may cause the registration of this Agreement to be cancelled upon the conclusion of such litigation.

(ii) Subject to the provisions of Subsection (i) above, Licensor agrees to register Licensee as an "authorized person" in accordance with Section 50 and 51 of the Israel Trademark Ordinance.

4. Delivery of Plans and Specifications to Licensor

(a) Licensee shall deliver to Licensor the following preliminary plans and specifications, information and other Trump Standard related items ("Preliminary Plans") for

the Building, for the Licensor's written approval and determination that they comply with the Trump Standards:

- (i) The engineering and design of the Building and all service systems of the Building;
- (ii) The exterior design of the Building, including, but not limited to the façade, signage, landscaping, access methods, and illumination;
- (iii) The interior signage, unit layouts and room counts;
- (iv) All furniture, fixtures, equipment, and appliances;
- (v) The sales and marketing plan for the Tower Property including sales office location and layout, sales staff training and sales collateral materials;
- (vi) The identity of the contractors proposed by Licensee for the construction of the Tower Property; provided, however, Licensor shall be deemed to approve any contractor that is acceptable to Licensee's institutional construction lender for the Building; and
- (vii) The manager(s) of the Tower Property; provided, however, Licensor shall be deemed to approve any manager that is acceptable to Licensee's institutional construction lender for the Building.

Within twenty (20) business days of receipt of the Preliminary Plans, Licensor will either approve the same or send a "Deficiency Notice" (as herein defined) to Licensee, whereupon Licensee shall prepare and deliver to Licensor revised Preliminary Plans ("Revised Preliminary Plans") which satisfy the Deficiency Notice. In the event Licensor does not deliver to Licensee an approval or issue a Deficiency Notice within twenty (20) business days of receipt of any Revised Preliminary Plans, Licensor shall be deemed to have approved the Revised Preliminary Plans.

(b) Prior to the commencement of the demolition of existing improvements or construction of the Tower Property, Licensee shall submit its final plans and specifications therefor (the "Final Plans and Specifications") including each of the items delineated in Subsection 4(a) (i) – (vii) hereof, to Licensor, to the extent not previously approved by Licensor in writing. Following Licensee's submission of such Final Plans and Specifications, Licensor shall review such Final Plans and Specifications within fifteen (15) business days of receipt thereof. Within fifteen (15) business days after review of the Final Plans and Specifications, Licensor shall deliver a report to Licensee, which either (1) approves, in writing, Licensee's Final Plans and Specifications or (b) identifies in detail and with particularity each portion of the Final Plans and Specifications that does not comply with the Trump Standard (the "Deficiency Notice") and specifies what changes need to be made to the Final Plans and Specifications before Licensor shall approve the Final Plans and Specifications; Licensee shall thereafter

diligently attempt to cure such deficiencies, and upon completion, shall re-submit the revised Final Plans and Specifications to Licensor. Upon obtaining the revised Final Plans and Specifications, Licensor shall review the same, and within ten (10) business days after receipt thereof, shall either: (x) approve the revised Final Plans and Specifications or (y) issue another Deficiency Notice. If the Parties reach an impasse such that the Revised Preliminary Plans or the Final Plans are not approved by Licensor after Licensor issues three (3) or more Deficiency Notices (with respect to each of the Revised Preliminary Plans and the Final Plans and Specifications), Licensor and Licensee shall each have the right to terminate this Agreement. Licensor agrees to work reasonably with Licensee to correct any deficiencies provided in a Deficiency Notice. Licensor and Licensee may exercise such right of termination by delivering written notice to the other (the "Termination Notice") within, but not later than, fifteen (15) business days after the third Deficiency Notice, whereupon this Agreement shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, Licensor shall be entitled to retain any portion of the Royalty paid to Licensor prior to the date of the termination of this Agreement. Once approved, Licensee shall construct or cause construction of the Tower Property in accordance with the Final Plans and Specifications, approved by Licensor, which shall adhere to and comply with the Trump Standard.

5. Royalty

(a) Licensee shall pay to Licensor for the rights granted to Licensee hereunder, the "Royalty" (as herein defined) set forth on Exhibit "A" annexed hereto and made a part hereof.

(b) In the event Licensee shall be required to withhold any taxes or other mandatory payments imposed by the State of Israel ("Licensor Local Tax Obligation"), and provided that at the time of the withholding there is a double taxation treaty in force between the State of Israel and the United States enabling the Licensor to obtain a credit in the United States with respect to such withholdings, Licensee shall pay such Licensor Local Tax Obligation on Licensor's behalf and furnish to Licensor the receipt, remittance voucher or other original evidence of such payment of any Licensor Local Tax Obligation so paid so that Licensor can apply for a corresponding tax credit in the United States. Licensee shall fully cooperate with Licensor and provide such information and records as Licensor may reasonably require in connection with any application to the tax authorities of Israel and/or the United States, including but not limited to, the obtaining of a credit for any Licensor's Local Tax Obligation paid in the State of Israel which Royalties and other payments are being made by Licensee to Licensor hereunder.

6. Term. The term of this Agreement (the "Term") shall commence on the date hereof and shall end on the first to occur of: (i) the expiration or earlier termination of this Agreement, as provided herein or (ii) the day upon which the Tower Property shall no longer be known by the New Trump Mark, and Licensor and Licensee have not agreed in writing or are not in substantive discussions for the use of a Trump Name as the name of the Tower Project.

7. Non-Trump Standard Default: Licensor's Default

(a) In addition to the provisions of Paragraph 3 hereof, Licensee shall be considered in default and Licensor may terminate this Agreement if Licensee shall default in (i) the payment of a sum of money and such default shall not be cured within a period of ten (10) days after written notice of such default is given by Licensor to Licensee, or (ii) except as otherwise provided in Section 3(c) hereof as they are related to a Trump Standard Default, the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensor to Licensee; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensee shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensee shall have such additional time as shall be reasonably necessary to cure such default, not to exceed sixty (60) days. During any such default by Licensee, any sum of money due hereunder shall accrue interest at the highest rate permitted by applicable law.

(b) Licensor shall be considered in default and Licensee may terminate this Agreement if Licensor shall default in the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensee to Licensor; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensor shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensor shall have such additional time as shall be reasonably necessary to cure such default, not exceeding sixty (60) days.

8. Licensor's Termination. In addition to any other right or remedy of Licensor hereunder, Licensor shall have the absolute right to terminate this Agreement and the rights licensed hereunder, upon ten (10) days prior written notice of such termination to Licensee, if:

- (a) Licensee files a petition in bankruptcy or is adjudged bankrupt; or
- (b) a petition in bankruptcy is filed against Licensee and not discharged within sixty (60) days; or
- (c) Licensee becomes insolvent, or makes an assignment for the benefit of its creditors or any arrangement pursuant to any bankruptcy or like law; or
- (d) a receiver is appointed for Licensee or its business; or
- (e) a substantial portion of the Building is damaged or destroyed by fire or other casualty and the Building is not rebuilt in a diligent and expeditious manner and in compliance with the Trump Standard; or
- (f) the Tower Property or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Tower Property cannot be operated in a manner consistent with the Trump Standard; or

(g) Sonny Kahn, Russell W. Galbut and Bruce A. Menin (singularly, a "Principal" and collectively the "Principals") and any successor to any Principal approved by Licensor or permitted pursuant to Paragraph 12(c) hereof, cease collectively to own a majority of the direct or indirect interests in Licensee and to control the day to day activities of Licensee.

(h) The construction of the Building fails to commence within twenty-four (24) months from the date of this Agreement, unless such delay shall result from any strikes, lockouts or labor disputes, inability to obtain labor (but excluding all delays resulting from delays in obtaining permits for foreign workers that exist for more than ninety (90) days in the aggregate) or materials or reasonable substitutes thereof, acts of God, governmental restrictions, regulations or controls, terrorist, enemy or hostile government action, civil commotion, war, riot or insurrection, fire or other casualty or other events similar to the foregoing beyond the reasonable control of Licensee (collectively, "Unavoidable Delays") in which event such twenty-four (24) month period shall be deemed extended one (1) day for each day of Unavoidable Delay which is contemporaneously documented in writing to Licensor; or

(i) A Tofes 4 (Form 4) has not been issued for the Building within forty (40) months from the commencement of construction, except as a result of Unavoidable Delays, in which event, such thirty-six (36) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor; or

(j) Closings have not occurred or binding contracts with appropriate deposits have not been accepted by Licensee for at least seventy (70%) percent of the Units within forty (40) months from the date of commencement of construction, except as a result of Unavoidable Delays, in which event, such forty (40) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor.

(k) Licensee shall notify Licensor in writing of each Unavoidable Delay provided in subparagraphs (h) through (j) inclusive, above and the reasonably anticipated duration of the same, promptly after the occurrence of the same, otherwise such Unavoidable Delay shall be deemed waived.

(l) Notwithstanding the termination of this Agreement pursuant to any of its terms, Licensor shall be entitled to receive, and Licensee shall pay to Licensor all Royalties that have accrued to Licensor prior to the date of termination. Royalties due to Licensor pursuant to this Section 8 (l) shall be paid to Licensor on the delivery of possession of a Unit, and such obligations shall survive such termination. A Licensee Fee shall accrue to Licensor on date that a contract of sale or a lease of a Unit is entered into.

9. Licensee's Termination. Notwithstanding anything to the contrary herein, including but not limited to the provisions of Paragraph 7(b) hereof, Licensee shall have the right to terminate this Agreement upon ten (10) days prior written notice of such termination to Licensor if:

(a) the Building or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Building and land upon which it is located cannot be operated in a manner consistent with the Trump Standard; or

(b) prior to the sale of at least seventy (70%) percent of the Units in the Tower Property that are offered for sale to the public, Donald J. Trump (i) dies; (ii) becomes permanently incapacitated or otherwise ceases permanently to render services to Licensor; (iii) is no longer a principal of Licensor; (iv) is convicted of a felony; (v) files a petition in bankruptcy or is adjudged bankrupt; (vi) a petition in bankruptcy is filed against Donald J. Trump and not discharged within sixty (60) days; or (vii) becomes insolvent, or makes an assignment for the benefit of his creditors or any arrangement pursuant to any bankruptcy or like law.

(c) The termination of this Agreement pursuant to this Paragraph 9 shall not impair Licensor's right to receive the Royalty in respect of units for which purchase contracts and leases shall be entered into prior to the date of termination.

10. **Discontinuation of Use of Marks.** Upon the expiration or termination of this Agreement for any reason, Licensee will immediately undertake its best efforts to discontinue any and all uses of the Trump Marks, by itself and by any Occupant, and make and shall cause each Occupant to make, no further use of the same whatsoever. If Licensee or any Occupant fails to so discontinue all such use within ninety (90) days, Licensor shall be entitled to immediate injunctive relief in addition to damages and all other applicable remedies.

11. **Licensee Indemnification.** Licensee hereby agrees to indemnify, defend, and hold free and harmless Licensor, its members, shareholders, employees, representatives, directors, officers, and Donald J. Trump and its and his successors and assigns (collectively, "Licensor Indemnified Parties") from and against any and all causes of action (including, but not limited to, product liability actions, tort actions and actions of any Occupants) and reasonable out-of-pocket expenses, including, but not limited to, interest, penalties, attorney and third party fees, and all reasonable amounts paid in the investigation, defense, and/or settlement of any claims, suits, proceedings, judgments, losses, damages, costs, liabilities and the like, (collectively "Claims and Expenses") which may be suffered, incurred or paid by any Licensor Indemnified Party, arising in whole or in part, directly or indirectly, out of (i) Licensee's or its agents, servants, employees or contractors acts or omissions in breach or default of this Agreement or (ii) the design, construction, operation, maintenance or repair of the Tower Property; or (iii) any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, arising from any use of the Approved Logos or (iv) Licensee's or its agents, servants, employees or contractors failure to comply with any laws. The foregoing indemnification shall not apply to any Claims and Expenses resulting from the negligence or willful acts of any Licensor Indemnified Party.

12. **Assignment**

(a) Licensor may assign this Agreement without the prior consent of Licensee to Donald J. Trump or an entity controlled by Donald J. Trump, or any heir, successor or legal representative of Licensor or Donald J. Trump; provided the assignee assumes the terms and conditions of this Agreement and owns or controls the New Trump Mark. This Agreement and Licensee's use of the New Trump Mark hereunder shall inure solely to the benefit of Licensor and to any and all heirs, successors or assignees of Licensor who owns or controls the New Trump Marks.

(b) Licensee may assign this Agreement as collateral to an institutional construction lender (the "Lender") without the written consent of Licensor, provided that (i) the form and content of such assignment shall be reasonably acceptable to Licensor; and upon an event of default by Licensee under any such institutional construction loan the Lender shall, within thirty (30) days of the date upon which it legally obtains possession of the Tower Property, assume the obligations of Licensee hereunder. Until such time as the Lender shall assume the obligations of Licensee hereunder, it shall have no right or interest in or to the New Trump Mark.

(c) The Principals may by will or intestacy transfer their direct or indirect interests in Licensee to each other or to the spouses or children of the Principals, which transferees shall be bound by the terms and provisions of this Agreement.

13. Infringement; Licensor Indemnification

(a) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based solely on the use of the New Trump Mark (exclusive, however, of any Approved Design Logos) for which Registration has issued by the ITO pursuant to the terms of this Agreement, is instituted against Licensee, Licensor hereby agrees, subject to the other provisions of Section 1(a) and this Section 13(a), to indemnify, defend, and hold free and harmless Licensee, its employees, representatives, directors, officers, successors and permitted assigns from and against any and all such causes of action and reasonable out-of-pocket expenses, including, without limitation, interest, penalties, attorney and third party fees which may be suffered, incurred or paid by Licensee in connection therewith. Licensee agrees to cooperate with Licensor in the defense of such action and to take no actions of any kind regarding such claim without the express prior written consent of Licensor, such consent not to be unreasonably withheld or delayed. Licensor shall have the sole and absolute right to settle any such action and to negotiate and determine the settlement terms. Licensee shall take all steps reasonably recommended to mitigate its damages incurred, including the removal of any New Trump Mark from the Tower Property and discontinuance of any use of the New Trump Mark, if required by Licensor. The remedy provided in this paragraph shall be the sole and entire remedy of Licensee. However, Licensor shall not be responsible for any special, consequential or exemplary damages or projected lost sales or profit of Licensee or other costs, losses or expenditures of Licensee. Licensee shall promptly notify Licensor of any marks used by third parties that may be confusingly similar or otherwise damaging to the New Trump Mark, but shall take no other action of any kind with respect thereto, except by express prior written authorization of Licensor.

(b) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based on use of the New Trump Mark (exclusive of any Approved Design Logos) is instituted against Licensor, Licensor shall have, at Licensor's option, the right to: (i) defend itself against any such action, proceeding or claim; or (ii) enter into any settlement of any such action, proceeding or claim in its sole discretion.

14. Representations and Warranties; Covenants

(a) Licensor represents and warrants to Licensee that:

(i) Licensor has the power and authority and all necessary licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensor of the Agreement does not and will not conflict with, or result in any breach or contravention of any contractual obligation to which Licensor is a party or any order, injunction, writ or decree of any governmental authority to which Licensor or its property is subject or violate any requirement of law.

(iii) Licensor has not granted to any third party any rights inconsistent with the license rights granted to Licensee hereunder.

(iv) This Agreement constitutes a legal, valid and binding obligation of Licensor, enforceable against Licensor in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(v) Licensor shall use its commercially reasonable efforts to protect and maintain in full force and effect, at its expense, (x) the New Trump Mark (exclusive of Approved Logos) in Israel, to the extent Registration has been issued by the ITO; and (y) in the United States, with respect to any registrations with the U.S. Patent and Trademark Office of the same trademark as the New Trump Mark (other than Approved Logos);

(vi) The New Trump Mark is free and clear of any and all liens and other encumbrances and will not be pledged or granted as a security interest during the term of this Agreement unless such pledge or security interest is subject to this Agreement.

(b) Licensee represents and warrants to Licensor that:

(i) Licensee is a duly organized, validly existing and in good standing under the laws of the State of Delaware. Licensee has the power and authority and all licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensee of this Agreement has been duly authorized by all necessary corporate action, and does not and will not contravene the terms of Licensee's charter documents, conflict with, or result in any breach or contravention of, any contractual obligation to which Licensee is a party or any order, injunction, writ or decree of any governmental authority to which Licensee or its property is subject or violate any requirement of law.

(iii) This Agreement constitutes legal, valid and binding obligations of Licensee, enforceable against Licensee in accordance with their respective terms, except as

enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(c) Licensee covenants with, warrants and represents to Licensor as follows

(i) Licensee is not now, nor shall it be at any time during the Term, an individual, corporation, partnership, joint venture, trust, trustee, limited liability company, unincorporated organization, real estate investment trust or any other form of entity (collectively, a "Person,") with whom a United States citizen or entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise. Neither Licensee nor any Person who owns an interest in Licensee is now nor shall be at any time during the Term a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.C. 5312 (a) (z) as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC or otherwise.

(ii) Licensee has taken, and shall continue to take during the Term, such measures as are required by applicable law to assure that the funds paid to Licensor hereunder, are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. Licensee is, and during the Term will be, in compliance with any and all applicable provisions of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sanctions 1956 and 1957.

15. Insurance. All insurance coverage shall be subject to Licensor's review and reasonable approval and shall include the following:

(a) Prior to Commencing Construction:

(i) Licensee's Contractors shall provide evidence of a Contractors All-Risk Policy providing Builders' Risk Coverage on a Completed Value Form and Third Party Liability with limits of \$100,000,000.

(ii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(iii) Licensee shall cause the Architect and Engineers to obtain and maintain Architect's and Engineer's Professional Liability Insurance during the period commencing on the date of the Architect's Agreement and expiring no earlier than twenty-four (24) months after the substantial completion of the Building. Such insurance shall be in an amount equal to at least \$5,000,000 per claim.

(b) Post Construction of the Building:

(i) Special Perils Insurance: Licensee shall maintain property insurance against all risks of loss to the Property customarily covered by so-called "All Risk" or "Special Perils Form" policies which shall include the following perils: building collapse, fire, flood, hurricane, lightning, malicious mischief, subsidence, terrorism, vandalism, loss of rents, water damage, windstorm, additional expense of demolition and increased costs of construction, including, without limitation, increased costs that arise from any changes in laws or other legal requirements with respect to such on restoration in a minimum amount of \$10,000,000; at least one hundred (100%) percent of the replacement cost value of the Improvements; and all tenant improvements and betterments that any lease requires.

(ii) Liability Insurance: Licensee shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall provide coverage of at least \$50,000,000 per occurrence and \$50,000,000 in the annual aggregate, per location. If any Liability Insurance also covers other location(s) with a shared aggregate limit, then the minimum Liability Insurance shall be increased to \$50,000,000. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability (including, without limitation, any liability assumed under any leases), and products and completed operations. All Liability Insurance shall name the Indemnified Parties as "Additional Insureds".

(iii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(c) Evidence, acceptable to Licensor, of the existence of all such insurance shall be given to Licensor at least every six (6) months during the Term hereof.

16. Notices. Any notice, election, request or demand which by any provision of this Agreement is required or permitted to be given or served hereunder shall be in writing and shall be given or served by (i) hand delivery against receipt; or (ii) by any nationally recognized overnight courier service providing evidence of the date of delivery; or (iii) by certified mail

return receipt requested, postage prepaid; or (iv) by facsimile transmission, provided it is also concurrently sent by mail as provided in (iii) above, in each case addressed to:

(a) Licensee:

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, Florida 33137
Attn: Sharon Christenbury, Esq.
Fax: 305-573-2315

with a copy to:

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

(b) Licensor:

Trump Marks LLC
c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022
Attention: Donald J. Trump
President
Fax: (212) 755-3230

With a copy to:

The Trump Organization LLC
725 Fifth Avenue
New York, New York 10022
Attention: Bernard R. Diamond
Executive Vice President and General Counsel
Fax: (212) 317-0037

or to such other address or addresses, or such other persons, as a party shall from time to time designate by notice given and delivered as aforesaid. Any notice shall be deemed to have been rendered or given: (w) on the date hand delivered (or when delivery is refused), unless such hand delivery was not on a Business Day (as herein defined) or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (x) on the date delivered by a courier service (or when delivery is refused), unless such delivery was not on a Business Day or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (y) three (3)

Business Days from the date deposited in the mail, if mailed as aforesaid; and (z) the date sent by facsimile transmission, provided a copy is concurrently sent in the manner provided in subsection (ii) above. For the purposes of this Paragraph 16, a "Business Day" shall mean a day on which business is transacted by the Bank of Israel.

17. Miscellaneous

(a) This Agreement shall be governed, both as to interpretation and enforcement, by the laws of the State of New York and, as necessary, in the courts in that State, without regard to any principles of conflicts of law. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the federal court or state court located in the County of New York in the State of New York, and each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or thereafter have to the laying of the venue of any such suit, action or proceeding in any such court of that any such suit, action or proceeding brought in any such court has been brought in an inconvenient form. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. The parties acknowledge that the courts of the State of New York are a convenient forum for a resolution of any disputes hereunder. Notwithstanding the foregoing, but in addition to the rights provided above, Licensor shall have the right, in its sole discretion, to apply for injunctive relief against Licensee in the courts of Israel and the courts of Israel shall have jurisdiction with respect thereto.

(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

(c) If any provision hereof, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remaining provision herein, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

(d) This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended except by an instrument in writing signed by a Licensor and Licensee. Failure of a party hereto to complain of any act, omission, course of action, or continued acts or omissions, no matter how long such may continue, shall not be deemed a waiver by said party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waiving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or a consent to any subsequent breach of this Agreement.

(e) Licensor and Licensee covenant and agree that, without the written consent of the other Party, unless, as specifically provided herein, as may be required by law, or in an action or proceeding to enforce this Agreement, they will not, under any circumstances,

disclose or permit to be disclosed the existence of this Agreement or any of its contents to any persons or entities for any purpose whatsoever, other than solely to their respective shareholders, directors, members, officers and other employees, attorneys, accountants, banks, lenders, (collectively, "Affiliated Parties"), in each such case, on a "need to know basis." All Affiliated Parties shall be deemed bound by the provisions of this Paragraph 17(e). In connection with any such permitted disclosure to any Affiliated Parties, Licensor and Licensee, as applicable, shall be liable to the other Party for the acts or omissions of their Affiliated Parties that are in violation of this Paragraph 17(e).

(f) Notwithstanding anything to the contrary contained herein, including but not limited to the provisions of Paragraph 3 hereof, Licensor shall not be responsible for and shall have no liability to Licensee or to any third parties for, any design, construction, repair, or operation, means, methods, techniques, sequences and procedures, or for security or safety precautions and programs, employed by or on behalf of Licensee with respect to the design, construction, repair, or operation of the Tower Property. It is further understood and agreed by Licensee that Licensor is not an architect, engineer, contractor, or other professional licensed by any state, city or municipal authority or any department or agency of any of the foregoing, and Licensor shall provide no services to Licensee in such capacity and shall have no liability to Licensee or to any third party as such. Any reviews, recommendations, approvals, and advice to be furnished by Licensor under this Agreement shall not be deemed to be warranties or guarantees or constitute the performance of professional services as aforesaid.

(g) The Recitals set forth above are incorporated herein as if set forth in full.

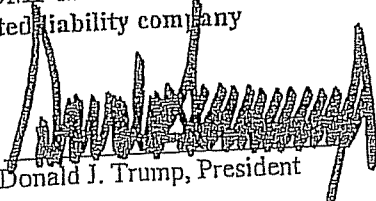
[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement which shall be effective as of the date first set forth above.

LICENSOR:

TRUMP MARKS LLC, a Delaware
limited liability company

By:


Donald J. Trump, President

LICENSEE:

CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company

By: Crescent Heights Diamond Holdings, LLC,
a Delaware limited liability company
Its managing Member

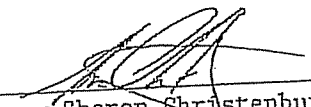

Name: Sharon Christenbury
Title: Vice President

EXHIBIT A

ROYALTIES

1. In consideration for Licensor's execution and delivery of this Agreement and the rights granted to Licensee hereunder, Licensee shall pay to Licensor amounts (singularly, the "Royalty" and collectively, the "Royalties") equal to the sum of:
 - (a) \$1,000,000.00 (U.S.), (the "Initial Payment") which shall be non-refundable and paid to Licensor on the date that Licensee shall be issued the initial construction permit for the commencement of construction of the Building, other than permits for demolition required under a pre-development loan, if any.
 - (b) An amount (the "Residential Incentive") equal to twenty-five (25%) percent of the amount by which the average of the U.S. dollar aggregate sales prices, including upgrading, for all units in the Residential Component that are offered for sale to the public (which shall not be less than ninety-five (95%) percent of all units in the Residential Component) equals or exceeds \$550.00 (U.S.) per "Residential Square Foot" (as herein defined), net of any applicable value added tax ("VAT") that is added to the purchase price; and
 - (c) An amount (the "Non-Residential Incentive") equal to ten (10%) percent of the sales price, net of any VAT, for each Storage Space, Garage Space and unit of the Retail Component (collectively, "Non-Residential Portions"); and
 - (d) An amount (the "Rental Incentive") equal to ten (10%) percent of the gross rental payments received by Licensee for residential units in the Residential Component or retail units (or portions thereof) in the Retail Component or for Storage Space or Garage Space, in each case less only any common area costs, including common utilities, taxes and operating expenses and other similar items that are passed through to the tenants, without premium or override added by Licensee.
 - (e) For the purposes of this Exhibit A, "Residential Square Foot" shall mean the area within each unit that is capable of being air-conditioned. In the event the Parties shall be required to utilize square meters as opposed to Residential Square Feet, as the appropriate measurement for purposes of this Exhibit A, then the Parties agree that each square meter shall equal 10.70391 square feet.
2.
 - (a) The Residential Incentive shall be computed and paid to Licensor (the "Interim Residential Payment"), less the amount of the Initial Payment, on the date upon which possession of eighty-five (85%) percent of the Residential Component Units that are offered for sale to the public have been delivered to the purchasers.

Upon the delivery of possession of the last of the Residential Component Units that are offered for sale to the public, Licensor and Licensee shall recompute the amount of the Residential Incentive for all Residential Component Units (the "Final Residential Computation"). If the Final Residential Computation is greater than the sum of all Interim Residential Payments, the positive difference shall be paid by Licensee to Licensor within ten (10) days of such computation. If the Final Residential Computation is less than the sum of the Interim Residential Payments, the difference shall be paid by Licensor to Licensee within ten (10) days following such computation.

- (b) The Non-Residential Incentive shall be paid to Licensor within five (5) days of Licensee's receipt of payment from the applicable purchasers.
 - (c) The Rental Incentive shall be paid to Licensor quarter annually in arrears with respect to each lease in effect during such quarter-annual period.
3. Licensor or its authorized representatives will have the right to inspect, copy and audit at reasonable times (but not more than twice during any calendar year), and upon reasonable advance notice to Licensee, both during and after the Term, such original books, records, purchase contracts, leases and other documents that serve as the basis for the determination of the Sales Royalties and the Royalties. Licensor agrees that the information contained in Licensee's books and records will be subject to the confidentiality provisions of paragraph 17(e) hereof. Any inspection or audit will be paid for by Licensor. However, in the event that any inspection or audit shows that Licensee has under-reported the Sales Royalties or the Royalties by two (2%) percent or more for any given period, then Licensee shall pay to Licensor within fifteen (15) days after receipt of the audit report, the deficiency in the Sales Royalties or Royalties as the case may be, together with interest thereon at the rate of nine (9%) percent per annum from the original due date to the date of payment; the actual cost of such inspection or audit and other reasonable costs incurred by Licensor. Within ten (10) days following the expiration of each month of the Term Licensee shall provide to Licensor, in form and content approved by Licensor, a report as to all residential and retail sales and leasing, including parking and storage, that occurred in the immediately preceding month.
 4. In the event that any agreement for the sale or lease of any part of the Tower Property is set forth in New Israel Shekels, then for the purposes of calculating the Sales Royalties or the Royalties, the sales price (inclusive of all upgrades) and all rents shall be calculated according to the "representative rate" of the U.S. dollar, published by the Bank of Israel, as of the date of the execution of the sales or lease agreement.
 5. All definitions used in this Agreement, to which this Exhibit "A" is an exhibit, shall be deemed incorporated herein.

EXHIBIT B

POWER OF ATTORNEY

(follows this cover page)

IRREVOCABLE POWER OF ATTORNEY

We, the undersigned, CRESCENT HEIGHTS DIAMOND, LLC of 25 Broad Street, New York, New York 10004, do hereby appoint Advocates Isaac Molho and/or Orrin Persky and/or David N. Shimron and/or Jakob Melcer and/or Michal Arlosoroff and/or Dov Abramowitz and/or Shai Ganor and/or Michael Rabello and/or Michal Shur-Ofry and/or Jonathan Friedland and/or Tal Ranel-Cohen and/or Shlomit Agmon and/or Gil Ephrati and/or Raanan Persky and/or Orna Gabay and/or Orit Malka and/or Yitzchak Goldstein and/or Rachel Shay and/or Judy Amidor and/or Eyal Zalikha and/or Aharon Illouz and/or Roman Kogan and/or Inbal David, of Technology Park, Manahat, Jerusalem, Israel, jointly and severally (hereinafter: "Our Attorneys") to act jointly or severally as our true and lawful attorney or attorneys in fact and at law to act in our name and place and to do all that is necessary to CANCEL ANY REGISTRATION OF A TRADEMARK LICENSE(s), which may be registered with the Israeli Trademark Registrar, referring to trademark(s)/trademark application(s) in the name of Donald J. Trump and/or Trump Marks LLC, in which our name shall appear as licensee ("hereafter: Cancellation of Trademark License Registration")

Without derogating from the generality of the above, Our Attorneys shall be entitled to do the following for the above purpose:

1. To appear on our behalf and in our stead before any person, authority, institution, or office whether governmental, municipal, public or private—including, but not limited to, the Israeli Trademark Registrar.
2. To sign, execute, deliver, and acknowledge on our behalf and stead all requests, declarations, applications, forms, notices and other documents which shall be required for the purpose of Cancellation of Trademark License Registration.
3. To pay, on our behalf and stead and at our expense, all payments of any kind whatsoever for the purpose of Cancellation of Trademark License Registration.
4. This Power of Attorney shall be interpreted in the broadest manner so that our Attorney shall be able to, on our behalf and stead, execute any action that we ourselves and/or a person/persons acting on our behalf are legally entitled to do for the purpose of Cancellation of Trademark License Registration.
5. Any act executed and/or caused to be carried out by Our Attorney(s), on our behalf, in respect to this Power of Attorney, shall obligate us and our legal successors.
6. Since third party rights are dependent on this Power of Attorney, it shall be irrevocable, and we shall not be able to cancel it or change it. Furthermore, this Power of Attorney shall remain valid even if we become bankrupt, or enter into liquidation and/or any similar

proceedings, and shall bind our liquidators, trustees, receivers, and any other legal successors in title.

IN WITNESS WHEREOF, we have signed our name to this Power of Attorney specifically designated for the aforementioned purposes on this _____ day of May 2006.

CRESCENT HEIGHTS DIAMOND, LLC

By its authorized signatory:

Name:
Title:

Certification of Attorney:

I, the undersigned _____, of _____ as legal counsel to _____, hereby certify that the above are authorized signatories on behalf of _____ and that the signatures hereinabove duly bind _____.

Signature: _____

Name: _____, Esq.

Date: _____

SIGNATURE TO BE NOTARIZED AND AUTHENTICATED BY APOSTILLE

EXHIBIT C

THE RESTRICTED AREA

(follows this cover page)

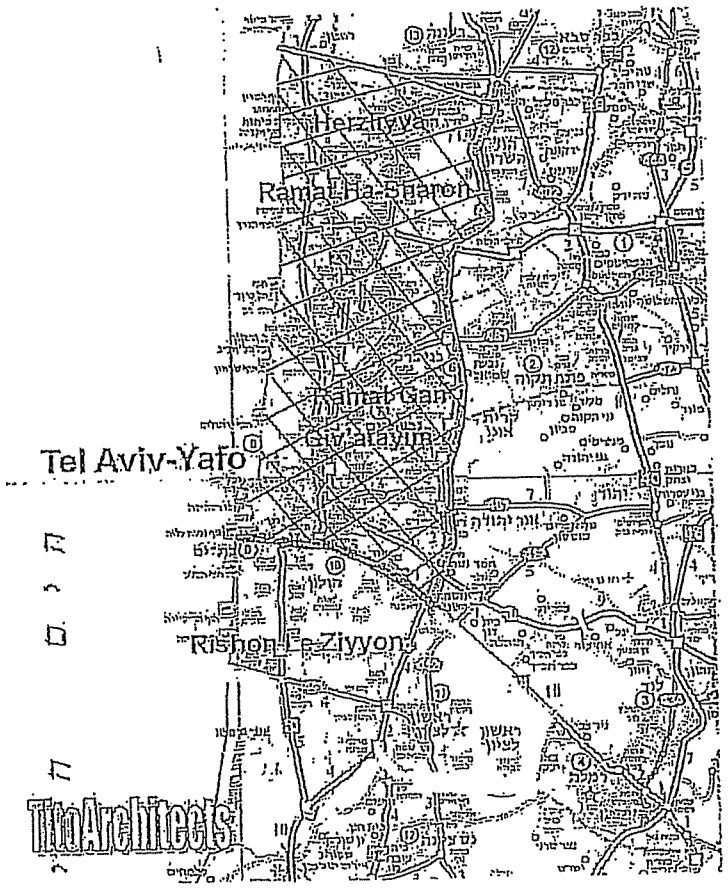


EXHIBIT C
THE RESTRICTED AREA
(The Restricted Area is crossed hatched)

FIRST AMENDMENT TO LICENSE AGREEMENT

This FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment") is made and entered into effective as of the 23rd day of May, 2006 by and between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor") and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company ("Licensee").

RECITALS:

A. Licensor and Licensee entered into that certain License Agreement dated as of May 23, 2006 (the "Agreement").

B. Pursuant to the terms and conditions of the Agreement, Licensor licensed to Licensee the right to use the trademark "Trump Tower" as the New Trump Mark for use in association with the Tower Property in Ramat Gan, Israel, pursuant to the terms and conditions of the Agreement.

C. At Licensee's request, Licensor has applied for the registration of the trademark "Trump Plaza" with The Israeli Trademark Office in classes 36 and 37.

D. Licensor and Licensee have agreed to amend the Agreement to provide that the New Trump Mark shall be "Trump Plaza", with the contingent right, as herein provided, for Licensee to use the trademark "Trump Tower" as the New Trump Mark if Licensee is prevented or prohibited from using the trademark "Trump Plaza" as the New Trump Mark.

E. Defined terms not otherwise defined herein shall have the meaning set forth in the Agreement.

NOW THEREFORE, for and in consideration of \$1.00 and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree to amend the Agreement as follows:

1. Paragraph 4 of the Recitals to the Agreement is amended and restated as follows:

WHEREAS, Licensee desires to use the name "Trump Plaza" or in the alternative, "Trump Tower", if the use of "Trump Plaza" is prohibited as the result of a Supervening Event (as provided in and subject to Section 1(j) below); which together with any "Approved Logo" (as hereinafter defined) is referred to herein as the "New Trump Mark"; and

2. Paragraph 1 of the Agreement is amended to incorporate new Paragraphs 1(j), (k), (l) and (m) as follows:

(j) During the Term of this Agreement, the New Trump Mark shall be the trademark "Trump Plaza", together with any "Approved Logo", until such time as

(x) Licensee is prohibited from lawfully using the trademark "Trump Plaza" for any reason (including but not limited to, as the result of the enforcement of rights by a third party, the decision of a court, tribunal, or dispute resolution body of competent jurisdiction or other occurrence which prevents Licensee from using "Trump Plaza"), or (y) Licensee, based on the advice of counsel, reasonably believes the continued use of the "Trump Plaza" trademark could expose Licensee or Licensor to potential liability to a third party (collectively a "**Supervening Event**"). Upon the occurrence of a Supervening Event, Licensee shall have the right to notify Licensor in writing (a "**Supervening Notice**") of: (i) such Supervening Event, with reasonable documentation explaining the cause thereof, and (ii) that Licensee has elected to use the trademark "Trump Tower" as the New Trump Mark under this Agreement in lieu of "Trump Plaza," subject, however, to the provisions of Paragraph (k) below. Upon delivery of the Supervening Notice to Licensor, all references to the New Trump Mark in this Agreement shall be deemed to mean the "Trump Tower" trademark together with any "Approved Logo"; Licensee shall then have the immediate right to use the "Trump Tower" trademark in lieu of the "Trump Plaza" trademark; and Licensee shall phase out usage of the trademark "Trump Plaza" within a reasonable period of time, not exceeding ninety (90) days. If Licensee elects to use the "Trump Tower" trademark as described above, Licensee shall pay all costs and expenses associated with changing the name of the Tower Property from "Trump Plaza" to "Trump Tower", including signage, advertising, marketing, stationery etc.

(k) Notwithstanding anything to the contrary contained in this Agreement, in the event Licensee shall substitute "Trump Tower" for "Trump Plaza" as the New Trump Mark pursuant to the provisions of Section 1(j) above, and Licensee shall then be compelled to cease use of "Trump Tower" as the New Trump Mark as the result of a Supervening Event, Licensee shall have the right to elect to return to the use of "Trump Plaza" as the New Trump Mark in accordance with the terms of Section 1(j) above. If Licensee elects to return to use of "Trump Plaza" as described in the preceding sentence, Licensor shall have no liability to Licensee under this Agreement if Licensor's trademark rights to "Trump Plaza" are adversely affected ("**Adverse Impact**") solely as a result of Licensee ceasing use of "Trump Plaza" as the New Trump Mark during the period of time when Licensee had elected to use "Trump Tower" as the New Trump Mark. However, if an Adverse Impact on Licensor's trademark rights in the "Trump Plaza" trademark is caused by any act or omission of Licensor in violation of this Agreement (including but not limited to a failure to maintain the "Trump Plaza" trademark), the limitations on Licensor's liability as provided in the preceding sentence shall not apply and all applicable terms and conditions of this Agreement shall apply.

(l) Notwithstanding anything to the contrary contained herein, if, after expiration of the time period provided for in Section 1(g)A above, Licensor shall have the opportunity to use or license "Trump Plaza" or "Trump Tower" in the Restricted Area, Licensor shall notify Licensee in writing of such potential use ("**Licensor Use Notice**"). Licensee shall have thirty (30) days after receipt of the

Licensor Use Notice ("Election Period") to elect in writing whether "Trump Plaza" or "Trump Tower" shall be the New Trump Mark ("Licensee Election Notice"). From the date of the Licensee Election Notice, the New Trump Mark shall be the mark elected by Licensee in the Licensee Election Notice which shall be irrevocable, and Licensor, its affiliates and Donald J. Trump shall then have the right to use, for any purposes not prohibited herein, whichever of "Trump Plaza" or "Trump Tower" is not identified in the Licensee Election Notice. If Licensee shall fail to deliver the Licensee Election Notice prior to expiration of the Election Period, Licensee shall be deemed to have elected to use the New Trump Mark in use by Licensee on the date of the Licensor Use Notice.

(m) If at any time Licensee shall be prohibited from using both "Trump Plaza" and "Trump Tower" as the New Trump Mark as the result of a Supervening Event, Licensee shall have the right to use another "Trump" name trademark ("Replacement Mark"). The Replacement Mark shall be mutually agreed upon, using good faith, by both Licensor and Licensee, which agreement shall not be unreasonably withheld by either party. The determination of the Replacement Mark shall follow the applicable procedures of Paragraph 1(d) hereof. The Replacement Mark shall be agreed upon as promptly as practicable after Licensee is prohibited from using both "Trump Plaza" and "Trump Tower" as the New Trump Mark. Any such Replacement Mark shall be registered, maintained and used in accordance with the terms and conditions of this Agreement and any such Replacement Mark shall then be deemed the "New Trump Mark" as used herein. If Licensee elects to use the Replacement Mark as described above, Licensee shall pay all costs and expenses associated with the trademark assessment, application for trademark registration of, and changing the name of the Tower Property to, the Replacement Mark, including signage, advertising, marketing, stationery etc.

3. Paragraph 1(g) C of the Agreement is amended and restated as follows:

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" and/or "Trump International Hotel and Tower" names, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that term is customarily used, or any Condominium Hotel, or for any other use not expressly prohibited herein, anywhere in the State of Israel, including the Restricted Area. For the sake of clarity, it shall not be a violation by Licensor of any provision of this Agreement, if at the time the New Trump Mark shall be "Trump Tower" Licensor shall use or license others to use the name "Trump International Hotel and Tower" anywhere in the State of Israel, including the Restricted Area, for a hotel or Condominium Hotel.

4. Miscellaneous.

(a) Ratification. Except as herein specifically modified and amended by this Amendment, all of the terms, covenants and conditions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect.

(b) Agreement. Except insofar as reference to the contrary is made in any such instrument, all references to the "Agreement" in any future correspondence or notice between the parties shall be deemed to refer to the Agreement as modified by this Amendment.

(c) Binding Effect. Each person executing this Amendment personally represents and warrants to the other parties hereto that he/she is legally authorized to execute this Amendment as the binding obligation of such person.

(d) Counterpart Signatures. This Amendment may be executed in multiple counterparts, each of which shall constitute an original but when taken together shall constitute one and the same instrument.

(e) Recitals Incorporated. The Recitals to this Amendment set forth above are incorporated herein as if set forth in full.

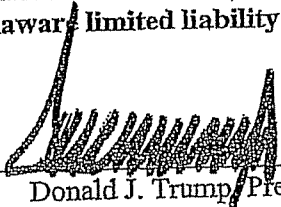
[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have respectively executed this Amendment as of the day and year first above written.

LICENSOR:

TRUMP MARKS LLC,
a Delaware limited liability company

By: _____



Donald J. Trump, President

LICENSEE:

CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company

By: Crescent Heights Diamond Holdings, LLC
a Delaware limited liability company,
its managing Member

By: _____

Name: Sharon Christenbury

Title: Vice President

Trump Marks LLC

c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022

Bernard R. Diamond
Executive Vice President
& General Counsel
Direct dial (212) 715-7288
Direct fax (212) 317-0037
bdiamond@trumporg.com

Via Certified Mail, RRR, Facsimile
and Federal Express

August 2, 2007

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, FL 33137
Attention: Sharon Christenbury, Esq.
Fax:: 305-573-2315

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

Re: License Agreement ("License Agreement") dated May 23, 2006 between Trump Marks LLC, as Licensor and Crescent Heights Diamond, LLC, as Licensee

Dear Ms. Christenbury:

Reference is made to the License Agreement.

The capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the License Agreement.

As I am sure you are well aware, since the inception of the License Agreement, the well-publicized association of the "Trump" name with the anticipated "Tower Property" (as defined in the License Agreement) has generated intense interest among potential purchasers, investors, lenders and the general public, which, in turn, has led to a dramatic appreciation in the value of the Land.

It has come to the Licensor's attention that the Licensee has either sold the Land or is entertaining competing offers for the sale of the Land. By its actions the Licensee obviously seeks to profit handsomely from the association of the "Trump" name with the Land. Notably, in several recent conversations between senior representatives of the Licensee and the Licensor, the Licensee failed to disclose to the Licensor its aforesaid actions.

Sharon Christenbury
August 2, 2007
Page 2

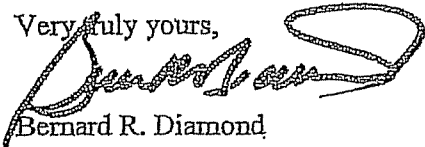
I remind you that among the numerous obligations of the Licensee under the License Agreement (and the inducement for the Licensor to execute and deliver the License Agreement to the Licensee) is the Licensee's covenant and agreement, among others, "...to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property" under the Trump brand.

Please be advised that any sale or other disposition of the Land by the Licensee, without the consent of the Licensor, will thwart the intent and purpose of the License Agreement to the Licensor's financial detriment, denying the Licensor the right to receive many millions of dollars in "Royalties", in violation of the License Agreement.

Any effort by the Licensee to assign the License Agreement to a purchaser of the Land, without the Licensor's consent, will constitute a separate material default by the Licensee under the License Agreement. In addition, the disassociation of the Trump name from the Tower Property as a result of any such unapproved sale, after the public acclaim that has resulted by reason of such association, will substantially damage the Trump name and reputation on a world-wide basis, for which the Licensor will hold the Licensee fully responsible.

I trust you will be guided accordingly.

Very truly yours,



Bernard R. Diamond

BRD: mgs

cc: Donald J. Trump
Donald J. Trump, Jr.
Ivanka Trump
Eric Trump
Jay Goldberg, Esq. - *not sent.*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TRUMPS MARKS LLC,

Plaintiff,

- against -

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each
said individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN
INDIVIDUALS REMAINING MEMBERS OF
CRESCENT HEIGHTS DIAMOND, LLC

Defendants.

Index No. 08/01372

STIPULATION

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned,
counsel for all parties in the above-captioned case, that all defendants' time to answer, move to
dismiss or present other defenses or objections, is extended until June 27, 2008. It is also hereby
stipulated and agreed, by and between the undersigned, counsel for all parties in the above-
captioned case, that service has been accepted on behalf of Bruce Menin, an individual
defendant, and plaintiff will not contest service as to Mr. Menin.

Dated: May 29, 2008
New York, New York

MEISTER SEELIG & FEIN LLP
Counsel for Plaintiffs

By: _____

Stephen B. Meister

EMERY CELLI BRINCKERHOFF
& ABADY LLP
Counsel for Defendants

By: _____

Richard Emery

2 Grand Central Tower
140 East 45th Street-19th floor
New York, NY 10017
(212) 655-3500

75 Rockefeller Plaza, 20th floor
New York, New York 10019
(212) 763-5000

Exhibit F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
: TRUMP MARKS LLC, :
: :
: Plaintiff, : Index No.: 08/601372
: (Cahn, J.)
: -against- :
: :
: CRESCENT HEIGHTS DIAMOND, LLC, SONNY :
: KAHN, an individual; RUSSELL W. GALBUT, an :
: individual, BRUCE A. MENIN, an individual, each :
: said individual being a member of Crescent Heights :
: Diamond, LLC, and THOSE UNKNOWN :
: INDIVIDUALS AND/OR UNKNOWN ENTITIES :
: CONSTITUTING THE REMAINING MEMBERS :
: OF CRESCENT HEIGHTS DIAMOND, LLC, :
: Defendants. :
: :
: :
: :
-----X

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT CRESCENT HEIGHTS DIAMOND, LLC'S
MOTION TO DISMISS THE COMPLAINT**

Richard D. Emery
Andrew G. Celli, Jr.
Ilann M. Maazel
Debra Greenberger
EMERY CELLI BRINCKERHOFF
& ABADY LLP
75 Rockefeller Plaza, 20th Floor
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Crescent Heights Diamond, LLC*

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Defendant Crescent Heights Diamond, LLC (“Crescent”) respectfully submits this memorandum of law in support of its motion to dismiss all of the claims of the Verified Complaint (the “Complaint”) of Trump Marks LLC against Crescent, pursuant to CPLR 3211(a)(7), for failure to state a cause of action, and CPLR 3211(a)(1), based upon documentary evidence (the License Agreement or “Agreement”).

PRELIMINARY STATEMENT

Donald Trump, by his own description, is a sophisticated “world-renowned builder and developer of luxury residential real estate.” Agmt., 1st Whereas Cl. He is a best-selling author, holding forth on the “art” of negotiating real estate deals. And he runs his own real estate university. Yet, having failed to negotiate a real estate licensing agreement to his liking in this case, his company comes to this Court and asks it to rewrite the Agreement.

But the Agreement is clear, conforming to the obvious intent of the parties. And both parties complied with it. It spells out concisely what Trump is, and is not, entitled to.

This deal was simple. Crescent licensed the “Trump Tower” name for a residential condominium building that did not yet exist but which Crescent intended to build if, among other things, it could acquire the land, receive the appropriate zoning variances from the Israeli authorities, and if the parties could agree on design specifications. If Crescent did build, Trump was to get a one-time fee when construction began. And then royalties, and only royalties, were to be paid when and if apartments were actually sold or rented. Crescent’s obligations were to design and operate the building according to standards fixed by Trump. Trump did not want his name on any building that did not meet his standards.

Trump, nonetheless, asserts that the license for his brand obligated Crescent to build and pay him royalties. But the License Agreement itself spells out that if Crescent did not build

within two years, for any reason within Crescent's control, Trump's remedy was termination. In other words, the Agreement specifically contemplates the possibility that the building would not be built, and provides, as any real estate deal should, for a remedy in that circumstance — termination. Similarly, the Agreement recognizes the necessity to ultimately agree on plans and specifications before the building could be constructed and provides that if the parties reach an impasse in determining those specifications, either party may terminate.

Neither of these sophisticated parties contemplated any remedies other than termination; the sole exception was Trump's right to damages for use of the marks after termination of the deal. Trump did not protect himself in any way (other than the right to terminate) from the possibility that the building would not be built and the property sold at a profit. Despite the fact that Trump now claims Crescent owes him a substantial amount of money, he never bargained for the right to participate in any Crescent profits which flowed from a sale required when rezoning was not possible.

Trump was nothing more than a licensor, not a partner in the transaction. Trump never invested a dime towards the purchase of the land. Trump never invested a dime in construction. All Trump did, according to the Complaint, is appear on a single, live-video feed with the Israel Business Conference. Nevertheless, Trump now seeks \$45 million+ in damages. This contract precludes any damage claim because Trump failed to negotiate for it.

Trump's remaining claims are no more than legal window dressing. The "good faith" and unjust enrichment claims improperly seek to rewrite the Agreement. This Court has repeatedly rejected such duplicative claims in similar cases. *See infra* at 19-20, 23-34. The "indemnification" claim is a reach, premised upon the failed breach claim, and limited by its terms to claims which Trump is defending, not pursuing. Trump's claims against the individual defendants, as well as its

claims for fraudulent conveyance and wrongful distribution (which were asserted against Crescent and the individual defendants) will be addressed by counsel for the individual defendants but, likewise, have no merit.

It is plain what happened here. Crescent sold land it bought at a profit, and Trump cannot abide losing out on a profit, whether or not he is entitled to it. Trump apparently wishes now that he had bargained for a contract clause to share in proceeds of an investment he did not pay for. But there is no such clause; there is no breach; and, without a breach, there is no case. The parties negotiated the very remedy they received. The motion to dismiss should be granted.

STATEMENT OF FACTS

For purposes of this motion to dismiss, defendant accepts the allegations in the Complaint as true. Defendant refers to the Complaint, and the License Agreement attached to the Complaint, in this brief.¹

On May 23, 2006, Donald Trump, a sophisticated “world-renowned builder and developer of luxury residential real estate,” through his company Trump Marks LLC (“Trump”), entered into a License Agreement with Crescent. Agmt., 1st Whereas Cl. Trump drafted this Agreement, the purpose of which was to license the Trump name for a possible building, the “Tower Property,” to be built on several parcels of land in Israel. Compl. ¶ 14. The Agreement defined the “Tower Property” as the “Building” which would “include a first class, luxury residential condominium component . . . and one or more retail components” (there was no mention of office space), together with four parcels of “Land” on which that Building would be constructed. Agmt., 3rd Whereas Cl. As alleged in the Complaint, at the time of the Agreement, Crescent did not have title to

¹ “A copy of any writing which is attached to a pleading is a part thereof for all purposes.” N.Y.C.P.L.R. § 3014 (McKinney 2007).

all the parcels of land. Compl. ¶ 17. Furthermore, as the Complaint alleges, the Tower Property could not be constructed as a residential and retail development without obtaining variances. Compl. ¶ 27. The idea for the possible building was grand and unprecedented: no less than the “tallest structure in Israel,” with 786,000 square feet of space. *Id.* ¶ 14. At the time of the Agreement, there was no building, and there were no units in a building. There was no agreement on plans and specifications for the building. Agmt. § 4. There was only an idea, and a piece of land to be acquired. Agmt. *passim*; Compl. ¶ 17.

The structure of the Agreement is straightforward. Trump would license his name if the land were acquired, the parties agreed on plans and specifications, construction permits were issued and the building were built to the Trump Standard. In return, Trump would receive various royalties. Agmt. §§ 1 (granting of license), § 3 (Trump Standard), § 5 (royalties). But if construction of the building did not begin within twenty-four months, Trump could terminate the Agreement and revoke the license. *Id.* § 8(h). To the extent construction did not occur due to events “beyond the reasonable control” of Crescent, the twenty-four month period would not run. *Id.* If however, construction did not occur for reasons *within* Crescent’s control, *e.g.*, because Crescent decides not to construct the building, then Trump’s sole remedy would be to terminate the Agreement and revoke the license after twenty-four months. *Id.*

The Agreement contemplates a number of other scenarios under which Trump could terminate the Agreement and revoke the license. Section 3 of the Agreement requires any design, construction, and building to meet the “Trump Standard.” *Id.* § 3. If Crescent failed at any time to meet the Trump Standard, Trump could terminate and revoke the license. *Id.* § 3(c). Section 4 reiterates the extent to which Trump wanted to ensure that appropriate standards were met for any building with the Trump name. That section lays out a detailed protocol for Trump’s review of the

“Final Plans and Specifications” and Crescent’s rights to redraft those plans based on Trump’s concerns. *Id.* § 4(b). It expressly contemplates that the Tower Property may not be built and, in fact, that in the event a disagreement over the plans reached an impasse, there was a reciprocal right to terminate the Agreement. *Id.* And if the Agreement is terminated as a result of an impasse, Trump retains royalties paid to date, if any. *Id.*

Furthermore, the Agreement expressly contemplated that the Tower Property, even if built, might not always be known by the Trump name, e.g., if the Tower Property were sold. The License Agreement provided that it would end on the earlier of “(i) the expiration or earlier termination of this Agreement, as provided herein or (ii) *the day upon which the Tower Property shall no longer be known by the New Trump Mark ...*” *Id.* § 6 (emphasis added).

If Crescent did build a building and sell units in the building, Trump would be entitled to receive certain royalties. *Id.* § 8(l). Exhibit A to the Agreement (entitled “Royalties”) provides that Trump would receive \$1 million if and when a construction permit were issued. Trump would receive additional royalties if and when any units in the future building were sold, provided they sold for more than a minimum price per square foot. Notably, the Agreement specified that the initial payment was not triggered by a permit to demolish the existing building at the site, nor was it triggered by a pre-development loan. *Id.* Ex. A. Trump would receive his initial payment only when and if the project received a “green light” construction permit for construction of the entire Tower Project.

Although the Agreement could have provided for an initial, non-refundable payment to Trump upon signing, it did not do so. *Agmt. passim.* The Agreement also does not include any form of penalty or liquidated damages if the building is not built. *Agmt. passim.* Rather, Section 8(h) provides that if no construction begins within a twenty-four month period, Trump may terminate the Agreement and revoke the license. Finally, the Agreement also does not include any clause which

would provide Trump a percentage of any profit if the land were resold.

This was a “nonexclusive” licensing agreement which placed minimal limitations on Trump’s ability to continue to exploit its mark worldwide. Agmt. §§ 1(b), (g). The limited exceptions to the nonexclusivity provision were that Trump could not license its name (1) in a specified area of Tel Aviv for up to 3 ½ years (unless the Agreement were terminated earlier, as described above) or (2) for a “Condominium Hotel” for a 12 month period. *Id.* § 1(g).

As alleged in the Complaint, Crescent did not construct a building on the Land, the variances were not granted, no permit to construct the Tower Property was issued, and the project did not therefore proceed to the “Final Plans and Specifications” stage. Crescent sold its Land to a third-party. Compl. ¶ 23. The Complaint does not allege that Trump had at any time invested any money to purchase the land; Trump did not. The Complaint does not allege that Trump had at any time invested any money to construct a building on the land; Trump did not. Trump’s only effort, according to the Complaint, was Donald Trump’s participation (presumably from Palm Beach, Florida) on a video feed with the Israel Business Conference. *Id.* ¶ 20. This participation did not even meet Trump’s contractual obligation to have Donald Trump personally appear in Israel to promote the building. Agmt. § 1(h).

Nevertheless, after Crescent sold the property, Trump brought this lawsuit, seeking over \$45 million in damages.

ARGUMENT

On a motion to dismiss pursuant to CPLR 3211(a)(7), “the court must grant the motion if plaintiff has failed to state a cause of action.” *Monaco v. Saint Mary’s Hosp. of Troy Inc.*, 585 N.Y.S.2d 589, 590 (3d Dept. 1992). “A motion pursuant to CPLR § 3211(a)(1) will be granted if the movant presents documentary evidence that definitively dispose[s] of the claim.” *Martian*

Entertainment, LLC v. Harris, No. 600384/06, 2006 WL 2167178, at *4 (N.Y.Sup. July 5, 2006) (Cahn, J.).

I. THE BREACH OF CONTRACT CLAIM SHOULD BE DISMISSED

Plaintiff's breach of contract claim fails for three independent reasons: (1) As is plain from the four corners of the Agreement, failure to build is not a breach of the Agreement; (2) Even if failure to build were a breach, Plaintiff was limited to the remedy set forth in the Agreement: termination of the license and payment of any royalties earned as of the date of termination; and (3) Under the "new business" rule, Plaintiff has failed as a matter of law to plead damages, an essential element of its contract claim.

A. Crescent Did Not Breach

In interpreting a contract, the Court must first look to its four corners. *R/S Assocs. v. New York Job Dev. Auth.*, 98 N.Y.2d 29, 32-33 (2002) (affirming dismissal of contract claim and holding that "[u]nless the court finds ambiguity, the rules governing the interpretation of ambiguous contracts do not come into play"). Where a contract is clear on its face, it should be enforced according to its terms, particularly when it is drafted by "sophisticated and counseled business persons." *Reiss v. Fin. Performance Corp.*, 97 N.Y.2d 195, 198 (2001); *see also Cornhusker Farms, Inc. v. Hunts Point Coop. Mkt., Inc.*, 769 N.Y.S.2d 228, 231 (1st Dep't 2003) ("If these commercially sophisticated and counseled parties had intended to [include a subject as] part of their agreement, they could easily have accomplished that purpose by drafting the contractual writings so that one or more of them expressly incorporated the [subject] by reference.").

This is a very simple Agreement: if Crescent builds, Trump attaches the Trump name to the building and receives royalties. But nothing in the Agreement requires Crescent to build.

The best Trump can do in the Complaint is point to Section 3(a) of the Agreement:

“Trump Standard.” The Trump Standard section provides, in relevant part:

Trump Standard; Trump Standard Default; Power of Attorney.

As a material inducement for the grant of the license provided herein, Licensee covenants and agrees with Licensor:

(a) to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property, in each case, with the level of quality and luxury associated with the premier, first class mixed use residential condominium building known as the Akirov Building in Tel Aviv, Israel (the “Signature Property”); and

(b) at all times, to maintain ... that Licensee and each Occupant ... maintain standards, with respect to the Tower Property, and the Residential and Retail Components thereof, as the case may be, that are at least equal to those standards of design, development, construction, marketing, sale, equipping, operation, repair and maintenance followed by the Signature Property (for the purposes of this Agreement, such standards as [of] the date hereof, are collectively called the “Trump Standard”).

(Id. § 3(a), (b)).

The purpose of the “Trump Standard” section is straightforward: to ensure that, *if* the building were built, it is built to the “Trump Standard.” It is not a covenant to build *per se*; rather, it is to ensure that the Trump name would only be placed on a building that met the “Trump Standard.”

This is plain for a number of reasons. First, the context of Section 3 makes plain the purpose of Section 3(a). *Kass v. Kass*, 91 N.Y.2d 554, 566 (1998) (“Particular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties as manifested thereby.” (internal quotation marks omitted)). Every single sentence in Section 3, including Section 3(a), is about quality control. Section 3(a) ensures that any property bearing the Trump name maintain a certain “level of quality and luxury” (*i.e.*, the “level of quality and luxury” enjoyed in the Akirov Building). Section 3(b) provides that any unit sold contain bylaws that “maintain standards” equal to the standard in the Akirov Building, defined as the “Trump Standard.” Section 3(c) provides that Trump is the “sole judge” of whether Crescent “is maintaining

the Trump Standard”; if Crescent fails, Trump may withdraw the license to the Trump name. Section 3(d) gives Trump the right to inspect any property built, to ensure that the Trump Standard is met. And Section 3(e) gives Trump the power to withdraw registration of the Agreement with the Israeli government in case the Trump standard is not met.

Section 3 is *not* a promise to build. Had the parties intended to create a promise to build, they would have written a section titled: “Promise to Build,” or “Obligation to Build,” or “Covenant to Build,” instead of “Trump Standard.” Trump would have required Crescent to build the property and imposed penalties if Crescent did not build the property. Experienced real estate contract drafters know how to spell out an enforceable covenant to build.² But that is not Section 3. Section 3 does no less, and no more, than what its title reflects: it ensures that, if built, the building would meet the “Trump Standard.”

Section 4 makes the point even more clear: It provides that Trump must approve Crescent’s plans for the Building to ensure that every component — from the signage, to the furniture, to the building manager — meets Trump’s standards. Agmt. § 4(a). And if Trump informs Crescent that Crescent’s design plans are not up to the Trump Standard, either party “may exercise [a] right of termination.” *Id.* § 4(b). This remedy, immediately following the “Trump Standard” section, is fundamentally inconsistent with an absolute obligation by Crescent to build.

The Agreement’s third Whereas clause also makes this plain. It states that Crescent “intends” to develop a building, not that it “will” develop a building, “shall” develop a building, or “covenants” or “promises” to build a building. “Intent” to build a building captures exactly the reality

² The computer header on the Agreement states “L:/BRD/Tel Aviv License reRev 5-29-06 v 20.doc,” which indicates that the Agreement is from BRD’s computer, namely Bernard R. Diamond, Trump’s in-house attorney. Agmt. *passim*; Compl. Ex. B (Aug. 2, 2007 letter from Diamond). It is well-settled, that, to the extent there “is ambiguity in the terms of a contract prepared by one of the parties, it is consistent with both reason and justice that any fair doubt as to the meaning of its own words should be resolved against such party.” *Rentways, Inc. v. O’Neill Milk & Cream Co.*, 308 N.Y. 342, 348 (1955) (internal quotation marks omitted).

of a plan to build in a foreign land with all the exigencies of a large-scale real estate project and is a far cry from a contractual covenant to build a building. There were numerous contingencies that had to be satisfied before the Tower Property could be constructed to the Trump Standard, as stated in the Complaint and the Agreement:

- Crescent needed to acquire the land on which the building was to be built. Agmt., 3rd Whereas Cl.; Compl. ¶ 14.
- Israeli authorities needed to provide a zoning variance if the property were to be built without office space. Compl. ¶ 26.
- Both parties needed to agree on plans and specifications to ensure that the Tower Property met the Trump Standard. Agmt., § 4(b). If the parties reach an impasse on those plans, the agreement provides that either party “shall each have the right to terminate this Agreement.” *Id.*
- Crescent needed a demolition permit under a pre-development loan and, later, an initial construction permit. Agmt., Ex. A.

The parties recognized these contingencies and provided that Trump would earn a royalty only when the hypothetical project approached fruition, namely, when the Israeli authorities would issue a construction permit. Agmt., Ex. A. Hence, the contingent nature of the deal warranted the use of the phrase “intends to build” in the third recital.

If there were any doubt about what Section 3 means (and there should be no doubt), Section 8(h) resolves it. Section 8 expressly contemplates that no building might ever be built, and describes what happens if Crescent does not begin construction within twenty-four months: Trump can terminate the license. Agmt. § 8(h). There are exceptions. If terrorism, or war, or an Act of God, or another event “beyond the reasonable control” of Crescent causes a period of delay, then that period does not count towards the twenty-four months. Those delays are defined as “Unavoidable Delays.” *Id.* But if Crescent fails to begin construction within twenty-four months for any reason *within* its reasonable control—*i.e.*, for any delays that *are* avoidable, Trump can simply terminate the Agreement and revoke the license. If Crescent decides (for whatever reason) not to build, that

decision is within its “reasonable control,” the twenty-four months run, and Trump can terminate the license. *Id.* This is its one and only remedy. And certainly Crescent relied on this explicit clause during the formation of the contract when, as the Agreement states, Crescent had not yet acquired the land and no one could be sure that this ambitious project would ever succeed. Agmt., 3rd Whereas Cl.; Compl. ¶ 14.

Nowhere does Section 8 suggest that a failure to build is a breach. Nowhere does any other section in the Agreement suggest that a failure to build is a breach. To the contrary, the parties expressly contemplated this possibility, and simply provided that if the building were not built, Trump could terminate the license. No harm, no foul.

The Complaint also alleges that Crescent did not acquire title to all the parcels of land until *after* the May 23, 2006 Agreement was signed. Compl. ¶ 14, 17. Trump cannot seriously contend that the Agreement imposes an obligation to build on land that Crescent *did not own when it signed the Agreement*. Crescent could not (and did not promise to) build the Tower Property on land it did not own. It promised only that, if a building were built, it would meet the “Trump Standard.” Agmt. § 3.

In *Long Island Rail Road Co. v. Northville Industries Corp.*, the New York Court of Appeals considered and rejected the argument that a license agreement — there, for an oil pipeline — obligated the defendant to construct the pipeline. 41 N.Y.2d 455 (1977). The agreement “did not obligate Northville to construct and operate a pipeline along the railroad’s right of way. The agreement was purely and simply a *license arrangement*.” *Id.* at 461 (emphasis added). That is this Agreement: a license arrangement. To construe the Agreement otherwise “would be contrary to the obvious intention of the parties as expressed therein.” *Id.* at 461-62. Experienced real estate contract drafters know how to spell out an enforceable covenant to build; here, they spelled out only a license

arrangement.

The Agreement could not be more plain: there is no obligation to build, and if Crescent fails to build, Trump can terminate the license. The Complaint alleges that Crescent did not build. By the plain terms of the Agreement, that was not a breach.

B. Even if Crescent Did Breach, Plaintiff's Only Remedy is Termination of the Contract

Assume, *arguendo*, that failure to build is a "breach." The Complaint still fails to state a claim, because Trump's *only* remedy is termination of the Agreement.

The sole and exclusive remedy that the Agreement provides for failure to build within twenty-four months is "the absolute right to terminate this Agreement and the rights licensed hereunder" and "any other right or remedy of [Trump] hereunder." Agmt. § 8. Trump has terminated the Agreement, and Crescent does not oppose Trump's termination.

The only remaining remedy is "any other right or remedy of [Trump] hereunder." *Id.* "Hereunder" is the key defining and *limiting* word. What are the remedies set forth "hereunder" in the Agreement?³ Section 8(l) provides that "Licensor shall be entitled to receive, and Licensee shall pay to Licensor all Royalties that have accrued to Licensor prior to the date of termination. Royalties due to Licensor pursuant to this Section 8(l) shall be paid to Licensor on the delivery of possession of a Unit. . . . A Licensee [*sic*] Fee shall accrue to Licensor on date that a contract of sale or a lease of a Unit is entered into."

Because (as alleged in the Complaint) Crescent never built any building, it never sold any unit, never entered into a contract of sale or a lease of any unit, and never delivered possession of

³ Trump's only other remedy provision under the Agreement is in Section 10, which applies only where, after "expiration or termination" of the Agreement, Crescent fails to "discontinue any and all uses of the Trump Marks." In such case, Trump can seek injunctive relief "in addition to damages and all other applicable remedies." Although this provision is irrelevant here, it again demonstrates that the parties knew how to define remedies, and provide for damage remedies, when they wanted to.

any unit in the (non-existent) building. This provision is therefore inapplicable. Its presence, however, demonstrates the clear limitation on Trump's available remedies.

Exhibit A to the Agreement, "Royalties," underlines the point. It provides that Trump is to be paid \$1 million on the date Crescent receives an "initial construction permit." Agmt. Ex. A. But as alleged in the Complaint, Crescent never received a construction permit (nor did it receive demolition permits). This \$1 million payment is not triggered even by "permits for demolition required under a pre-development loan." *Id.* § 1(a). Therefore the \$1 million royalty does not apply. The Royalty Exhibit also provides for various royalties upon the sale of units, but again, no units were even built, much less sold. Once again, the bargained-for remedies are specific, and in this case, inapplicable.

Nowhere does the Agreement even hint at a damages remedy if a building is not constructed or the land sold. To the contrary, the Agreement expressly provides for a specific, limited remedy in that situation: termination of the Agreement, revocation of the license.

Trump is limited to the defined remedies in the Agreement. *See W.W.W. Assocs., Inc. v. Giancontieri*, 77 N.Y.2d 157, 159 (1990) (dismissing complaint and holding that where contract language has "unambiguous reciprocal cancellation provision," plaintiff's complaint fails where it seeks alternate damages in the way of specific performance). Those remedies are (1) termination, and (2) if applicable, royalties. Royalties are inapplicable and termination has already occurred.

The Agreement not only limited Trump's remedy to termination, but limited Crescent to termination as well. Section 9 provides that if, at any time before "70% of the Units of the Tower Property" are sold, Donald Trump dies, is incapacitated, is convicted of a felony, files for bankruptcy, or "is no longer a principal of Licensor [Trump]," (among other possibilities) Crescent's remedy is simple and limited: Crescent "shall have the right to terminate this Agreement." Agmt. § 9. Thus, if

the building were built and Crescent Heights invested significant resources marketing the Trump name, if the Trump name became worthless or tainted overnight, Crescent could not seek damages. Even if Donald Trump decided to sell his interest as a principal in Trump Marks, Crescent could not seek damages. Its only remedy—like Trump’s only remedy in this lawsuit—would be termination.

New York law is well-established: the parties are limited to remedies set forth in their agreement. In *Long Island Rail Road Co.*, for example, the Court of Appeals held that the railroad plaintiff “may not recover damages based on estimates of the compensation to which it would have been entitled had [defendant] exercised its privilege to operate a pipeline.” 41 N.Y.2d at 462. Instead, the Court limited plaintiff’s remedies to those expressly set forth in the agreement. *Id.*

The Court of Appeals decision in *Kenford Co. v. County of Erie*, 73 N.Y.2d 312 (1989) (“*Kenford II*”) is also particularly instructive. There, a real estate developer donated land to the County to develop a sports stadium, and purchased land near the proposed stadium. The County (unlike here) specifically agreed to commence construction of the stadium within 12 months, and to provide the developer a 40-year lease to operate the facility. When the County later terminated the contract, the developer sued, *inter alia*, for the lost appreciation of the land it owned adjacent to the proposed stadium. But the Court of Appeals dismissed the developer’s claim.

The Court held that “damages must have been brought within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.” *Id.* at 319 (collecting cases). The Court must determine “what liability the defendant fairly may be supposed to have assumed consciously, or to have warranted the plaintiff reasonably to suppose that it assumed, when the contract was made.” *Id.* In *Kenford II*, it was undisputed “that at the time the contract was executed, all parties thereto harbored an expectation and anticipation that the proposed domed stadium facility would bring about an economic boom in the County and would result in increased land values

and increased property taxes.” *Id.* Nevertheless, the Court held: “We cannot conclude . . . that this hope or expectation of increased property values and taxes necessarily or logically leads to the conclusion that the parties contemplated that the County would assume liability for Kenford’s loss of anticipated appreciation in the value of its peripheral lands if the stadium were not built.” *Id.* at 319-20. “Indeed, the provisions in the contract providing remedy for a default do not suggest or provide for such a heavy responsibility on the part of the County. In the absence of any provision for such an eventuality, *the commonsense rule to apply is to consider what the parties would have concluded had they considered the subject.*” *Id.* at 320 (emphasis in original). The Court concluded that nothing in the contract “contemplated that the County was undertaking a contractual responsibility for the lack of appreciation in the value of Kenford’s peripheral lands in the event the stadium was not built.” *Id.*

This case is considerably more straightforward, because, as reflected in the Agreement, the parties *did* “consider the subject.” Section 8(h) expressly provides that, if construction does not commence within twenty-four months, Trump can terminate the Agreement and revoke the license. Certainly nothing in the Agreement obliged Crescent to pay Trump for the appreciation of Crescent’s land if Crescent chose to sell the land instead of building a property. Agmt., § 8(h) These sophisticated parties *could* have bargained for such a clause; they didn’t. Nor did the Agreement oblige Crescent, if it did *not* build a building, to pay Trump for whatever profits it might have earned had Crescent acquired all the land, built a building, and sold units to third-parties. Again, these sophisticated parties could have bargained for a lost-profits or liquidated damages clause; they didn’t. What the Agreement *does* contemplate, however, is that if no building were constructed, Trump can terminate the Agreement and revoke the license. Nothing more.

As the Court of Appeals noted in *Kenford II*, “the constant refrain which flows throughout the legion of breach of contract cases dating back to the leading case of *Hadley v*

Baxendale . . . provides that damages which may be recovered by a party for breach of contract are restricted to those damages which were reasonably foreseen or contemplated by the parties during their negotiations or at the time the contract was executed. The evident purpose of this well-accepted principle of contract law is to limit the liability for unassumed risks of one entering into a contract and, thus, diminish the risk of business enterprise.” *Id.* at 321. Even if “Kenford obviously anticipated and expected that it would reap financial benefits from an anticipated dramatic increase in the value of its peripheral lands upon the completion of the proposed domed stadium facility,” that expectation did not “translate into cognizable breach of contract damages since there is no indication whatsoever that the County reasonably contemplated . . . that it was to assume liability for Kenford’s unfulfilled land appreciation expectations in the event that the stadium was not built.” *Id.* at 322.

Kenford II is directly on point: Even if Trump anticipated that it would receive various profits if Crescent managed to acquire title to land it did not fully own, secure permits, build a building, and sell units in that building, there is “no indication whatsoever that [Crescent] reasonably contemplated that it was to assume liability . . . in the event that the [building] was not built.” To the contrary, as the Agreement demonstrates, the parties contemplated that, if no building were built, Trump could back out, and terminate the license, which it has.

The Agreement is plain on its face. The breach of contract claim should be dismissed.

C. Plaintiff Cannot Prove Damages Under the “New Business” Rule

Even if Crescent breached (it did not), and even if Trump were not limited to the remedies set forth in the Agreement (it is so limited), Trump has failed to adequately plead damages under the new business rule. Because damages are an essential element of a contract claim, Trump’s contract claim again fails. *Alpha Auto Brokers, Ltd. v. Cont’l Ins. Co.*, 728 N.Y.S.2d 769, 770 (2d Dep’t 2001) (“In order to recover damages for breach of contract, the plaintiffs were required to prove

damages resulting from that breach, and their failure to do so was fatal to that cause of action”); *Reade v. Sullivan*, 18 N.Y.S.2d 841, 841-42 (1st Dep’t 1940) (dismissing complaint as “insufficient for failure properly to allege damage”).

Damages “must be capable of proof with reasonable certainty,” and “not be merely speculative, possible or imaginary.” *Kenford Co., Inc. v. Erie County*, 67 N.Y.2d 257, 261 (1986) (“*Kenford I*”). Where a new business is “seeking to recover for loss of future profits, a stricter standard is imposed for the obvious reason that there does not exist a reasonable basis of experience upon which to estimate lost profits with the requisite degree of reasonable certainty.” *Id.* Though *Kenford I* was a post-trial appeal, its rule has been repeatedly applied to dismiss complaints. See *Calip Dairies, Inc. v. Penn Station News Corp.*, 695 N.Y.S.2d 70, 71 (1st Dep’t 1999) (affirming dismissal of claim for lost profits “because the profits alleged to have been lost could not be determined with a reasonable degree of certainty, the parties’ agreement having been in effect for only one year”); *Robin Bay Assocs., LLC v. Merrill Lynch & Co.*, 07 Civ. 376, 2008 WL 2275902, at *8 (S.D.N.Y. June 3, 2008) (dismissing claim for loss of future profits where defendant allegedly failed to raise funds for construction of St. Croix resort, because the relevant industry is “still in its infancy and cannot provide a record of performance sufficient to project future profits”; “there is simply no basis for the court to determine lost profits at this point [motion to dismiss] or any other stage of the litigation because such a calculation would require a high degree of speculation”); *Nineteen New York Properties Ltd. P’ship v. 535 5th Operating Inc.*, 621 N.Y.S.2d 42, 43 (1st Dep’t 1995) (dismissing claim for lost profits because “Corn Club’s business was a start-up venture; the lost profits were too speculative”); see also *Awards.com, LLC v. Kinko’s, Inc.*, 834 N.Y.S.2d 147, 152-53 (1st Dep’t 2007) (holding that it “would be highly speculative and unreasonable to infer an intent to assume the risk of lost profits in what was to be a start-up venture”).

All of these decisions are rooted in the rationale of *Kenford I*, which found that though the experts' "massive" "quantity of proof" calculating damages "unquestionably, represents business and industry's most advanced and sophisticated method for predicting the probable results of contemplated projects" (in fact, the court said, it was "difficult to conclude what additional relevant proof could have been submitted"), "[n]evertheless [this] proof is insufficient to meet the required standard." *Kenford I*, 67 N.Y.2d at 261-62.

Under the new business rule, Trump's alleged damages (in addition to being precluded under the Agreement itself) are plainly too speculative to survive a motion to dismiss:

- As alleged in the Complaint, at the time of the Agreement, Crescent did not yet even own all the land on which any building was to be built. Compl. ¶ 17.
- Nowhere does the Complaint allege that even a single person had promised to buy or lease a condominium in the hypothetical, future building.
- Trump was only entitled to recover royalties on the sale of units to the extent the sales prices exceeded \$550 (U.S.) per "Residential Square Foot." Agmt. Ex. A.
- No building like it existed in the entire State of Israel. It was to be the "tallest structure in Israel, a 70 story first class residential condominium property containing approximately 786,000 square feet, including residential and retail space." Compl. ¶ 14. Thus, there was no track record of sales.

This was, to put it mildly, a new business. At the time of the Agreement, no one could even have known what type of development Crescent would get approval to build, much less that Crescent would sell "x" units to "y" purchasers in the future building. Trump has suffered no damages as a matter of law. The breach of contract claim should be dismissed.

II. THE GOOD FAITH AND FAIR DEALING CLAIM SHOULD BE DISMISSED

The good faith and fair dealing claim — a frequent refuge of a plaintiff with a weak breach of contract claim — is also barred as a matter of law. “[I]n appropriate circumstances an obligation of good faith and fair dealing on the part of a party to a contract may be implied and, if implied will be enforced.” *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 304 (1983). However, the implied obligation is merely “in aid and furtherance of other terms of the agreement of the parties”; “[n]o obligation can be implied . . . which would be inconsistent with other terms of the contractual relationship.” *Id.* “[A] cause of action for breach of the implied duty of good faith and fair dealing” therefore “cannot be maintained” where the alleged breach is “intrinsically tied to the damages allegedly resulting from a breach of the contract.” *The Hawthorne Group, LLC v. RRE Ventures*, 776 N.Y.S.2d 273, 276 (1st Dep’t 2004) (internal citation omitted) (emphasis added).

Here, Trump’s “allegations of breach of the duty of good faith and fair dealing . . . presuppose that [Crescent] breached the express terms of the contract.” *Geler v. National Westminster Bank USA*, 770 F.Supp. 210, 215 (S.D.N.Y. 1991). “As a result, the . . . complaint could not, on any facts, entitle [Trump] to any relief to which [it] would not be entitled” under its breach of contract claim. *Id.*

As this Court held in *JRK Franklin, LLC v. 164 East 87th Street LLC*, “a party who asserts the existence of an implied-in-fact covenant bears a heavy burden, for it is not the function of the courts to remake the contract agreed to by the parties, but rather to enforce it as it exists.” No. 604313/05, 2006 WL 3361554, at *7 (N.Y.Sup. Oct. 3, 2006) (Cahn, J.) (internal citation omitted). Plaintiff must prove that a particular contract provision “impose[s] upon [defendant] a[] duty to affirmatively act, or refrain from acting,”—not merely that it would have been better or more sensible to include such a covenant, but rather that the particular unexpressed promise sought to be enforced is in fact implicit in the agreement viewed as a whole,” and that such obligation is not “inconsistent with

other terms of the contractual relationship.” *Id.* That Trump cannot do. As this Court held in *Horowitz v. New York*, the good faith claim should be dismissed because it is simply “redundant of the breach of contract claim.” No. 100382/03, 2003 WL 22287468, at *4, 5 (N.Y.Sup. Oct. 2, 2003) (Cahn, J.).

The parties expressly contemplated that a building might not be built. That is the premise of Section 8(h). If Crescent fails to begin construction within twenty-four months for any reason within its reasonable control, Trump can terminate. *Id.* It is hardly “bad faith” not to build when the Agreement expressly acknowledges that a building may not be built, for reasons either within, or beyond, Crescent’s control.

Having failed to identify an actionable breach, Trump cannot rewrite the Agreement through the back door of a good faith claim. *See supra*. These were highly sophisticated parties. They understood how to create an obligation to build, how to define breach, and which remedies to impose in case of breach. Had these parties desired to ensure that a building would be built or that Trump be compensated regardless of whether a building were built, they would have done so. Trump could have been paid “x million” dollars upon signing. Trump could have been paid liquidated damages if no building were built.

But the Agreement did no such thing. Indeed, such clauses make no sense in a *license* agreement. This was simply an agreement to license Trump’s name *if* the building were built. The building was not built, the license was not used. There is no bad faith claim here.

Nor does the line of cases that imply good faith to use reasonable efforts to exploit an exclusive license apply here. These cases—outside the real estate context—begin with *Wood v. Lucy, Lady Duff-Gordon*, 222 N.Y. 88, 91-92 (1917), which held that there is an implied “promise to use reasonable efforts” to exploit a licensing agreement, where (1) there was “exclusive privilege,” and

the licensor had “no right . . . to place her own indorsements or market her own designs except through the agency of the [licensee]”; (2) the licensor’s “sole compensation for the grant of an exclusive agency is to be [a portion] of all the profits resulting from the [licensee’s] efforts” and “[u]nless [licensor] gave his efforts, [licensee would] never get anything” and (3) such an implied promise was “the intent[] of the parties.” 222 N.Y. at 91-92. These cases do not control here, for a number of reasons. First, and most importantly, there can be no duty to exploit before the object of the agreement is created; in other words, once the building was constructed pursuant to the Trump Standard, Crescent Heights may have a duty to exploit the license, but certainly not at this early stage. *See Pharm. Horizons, Inc. v. Sterling Drug, Inc.*, 512 N.Y.S.2d 30, 31 (1st Dep’t 1987) (distinguishing *Wood v. Lady Duff-Gordon* as it “however, dealt with an endorsement of clothing, as opposed to the instant case which involved a non-existent type of product requiring research. The cases are not comparable, and *Wood* is therefore inapposite” and affirming dismissal of claim because “[i]n the absence of a triable issue of fact as to whether [defendant] created the product, and inasmuch as a product was never marketed, [defendant’s] obligation to pay royalties never ripened. Furthermore, because no royalties accrued, [defendant] maintained the right of termination.”). Second, and relatedly, the Licensing Agreement indicates that the parties intended that the duty to exploit would be triggered by the construction of the building. The initial payment would only be made once the construction permit was issued. Indeed, given the multiple contingencies in a real estate transaction, as laid out in the Complaint and the Agreement (*see supra* at 10, including acquiring the land, securing zoning variances, agreeing on plans and specifications, and securing construction permits), any other obligation would be foolhardy. Third, this was not an agreement where Trump’s “sole compensation” would be based on Crescent Heights’ efforts; the Agreement provided for an initial payment of \$1 million once the construction permit was issued. Finally, Trump retained considerable

liberty to use his mark worldwide; this was, by its terms, a “nonexclusive contract.” Agmt. § 1(b). While there were some limitations on the nonexclusivity of the marks, *id.* § 1(g), these were minimal, and in no way placed Trump in the vulnerable position of the licensor in *Lady Duff-Gordon*.

The good faith and fair dealing claim must be dismissed.

III. THE “INDEMNIFICATION” CLAIM SHOULD BE DISMISSED

Plaintiff’s indemnification claim is perhaps its most bizarre. Section 11 of the Agreement provides:

Licensee hereby agrees to indemnify, defend, and hold free and harmless Licensor . . . from and against any and all causes of action (including, but not limited to, product liability actions, tort actions and actions of any Occupants) and reasonable out-of-pocket expenses, including, but not limited to, interest, penalties, attorney and third party fees and all reasonable amounts paid in the investigation, defense, and/or settlement of any claims, suits, proceedings, judgments, losses, damages, costs, liabilities and the like . . . which may be suffered, incurred or paid by [Licensor], arising in whole or in part, directly or indirectly, out of (i) Licensee’s or its agents, servants, employees or contractors acts or omissions in breach or default of this Agreement...

The claim fails for two independent reasons:

A. No Breach, No Indemnification

Additionally, there can be no indemnification unless there is a “breach or default” of the Agreement. As set forth *supra*, here there was no breach or default under the plain terms of the Agreement. The indemnification “claim” is thus no more than an attempt to piggyback upon another, failed claim. Because the breach claim fails, the indemnification “claim” also fails.

B. Indemnification Plainly Applies Only to Third-Party Suits Against Trump

First, the indemnification clause was plainly meant only to apply when *third parties* sued Trump as a result of malfeasance by Crescent. Instead, Trump now claims it is entitled to attorneys’ fees if it prevails in a lawsuit against Crescent arising out of Crescent’s breach. But had these parties desired a fee-shifting provision as between them, they would have written one into the

Agreement: *i.e.*, “In the event of litigation relating to this Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs.” Or they could have written a one-way fee-shifting provision: “In the event Trump prevails in a litigation against Crescent for breach of the Agreement, Trump shall be entitled to its reasonable attorneys’ fees and costs.” The parties, however, did not write a fee-shifting provision into the Agreement.

In *Hooper Assocs., Ltd. v. AGS Computers, Inc.*, 74 N.Y.2d 487, 492-93 (1989), the New York Court of Appeals expressly rejected an indemnification claim for fees brought by the plaintiff in a breach of contract action. The Court first noted that indemnification provisions must be “strictly construed to avoid reading into it a duty which the parties did not intend to be assumed,” because an indemnification for litigation fees is “contrary to the well-understood rule that parties are responsible for their own attorney’s fees.” *Id.* at 491-92. To make use of an indemnification clause in such circumstances, a plaintiff must demonstrate that the indemnification provision was “unmistakably clear” that it covered indemnification in breach of contract actions, rather than indemnification relating to third-party claims. *Id.* at 492. In *Hooper*, the indemnification clause required defendant to indemnify plaintiff for “fees arising out of (i) [a]ny breach by AGS of any express or implied warranty hereunder and any express representation or provision hereof; [or] (ii) [t]he performance of any service to be performed hereunder. . . .” *Id.* at 490 n.1 (emphasis omitted). In considering whether this provision was “unmistakably clear,” the Court did *not* ask whether any of this language—for example indemnification for “performance of any service to be performed hereunder”—*could* apply to a breach of contract action. Instead, it asked whether any term is “exclusively or unequivocally referable to claims between the parties themselves or support[s] an inference that defendant promised to indemnify plaintiff for counsel fees in an action on the contract,” a significantly higher standard. *Id.* at 492.

Here, as in *Hooper*, the subjects of the indemnification clause are all “susceptible to third-party claims,” *id.*, and there is no indication whatsoever that the indemnification provision covers fees for contract claims by the Plaintiff.

Trump’s argument is all the more absurd in light of the obligation to “defend” Trump in Section 11. The presence of the word “defend” itself indicates that the clause is intended to apply where Trump is a defendant, not a plaintiff. And if Trump were correct that Crescent had the obligation both to “indemnify” and to pay the attorneys’ fees of Trump in an action against Crescent, then Section 11 would *also* require Crescent to “defend” Trump in an action against Crescent. How can Crescent “defend” Trump in an action against Crescent? Is Crescent obligated to hire lawyers to sue itself? As the *Hooper* court held, the “assumption of the defense has no logical application to a suit between the parties.” 74 N.Y.2d at 492-93.

Had a third-party sued Trump as a result of alleged malfeasance by Crescent, then the indemnification clause would be relevant. The claim here is a non-starter.

IV. THE UNJUST ENRICHMENT CLAIM SHOULD BE DISMISSED

The unjust enrichment claim is also no more than breach of contract revisited. And it is well-settled that, where there is a contract that governs the relationship at issue between parties, there can be no unjust enrichment claim.

This Court has repeatedly held, and it is a matter of black letter law, that where “there is a valid contract governing the subject matter of the parties’ dispute, recovery in quasi contract, for unjust enrichment, for events arising out of that same subject matter is precluded.” *Wilhelmina Artist Mgmt., LLC v. Knowles*, No. 601151/03, 2005 WL 1617178, at *10 (N.Y.Sup. June 6, 2005) (Cahn, J.); *Franco v. Guardian Life Ins. Co. of America*, No. 604302/2001, 2003 WL 230700, at *3 (N.Y.Sup. Jan. 22, 2003) (Cahn, J.) (dismissing unjust enrichment claim because the “parties’ rights

and liabilities are governed by the terms of an express contract”); *Horowitz v. New York Blood Ctr., Inc.*, No. 100382/03, 2003 WL 22287468, at *4 (N.Y.Sup. Oct. 2, 2003) (Cahn, J.) (same).

Here, there can be no dispute that there is a valid contract governing the subject matter of the dispute — the Tower Property, which, as defined in the Agreement, included both the land and the building to be constructed on the land. Agmt., 3rd Whereas Cl. If a building were not built, an eventuality that the Agreement specifically contemplates, then it is inevitable that the land would be resold. Since Trump did not bargain for any participation in the possible profits from a future sale of the land, there can be no claim for unjust enrichment. *See supra*.

Furthermore, and as an alternate ground to dismiss the unjust enrichment claim, “there can be no unjust enrichment claim where defendant had the right to act as it did pursuant to a contract between the parties.” *Horowitz*, 2003 WL 22287468, at *4. Here, as set forth in Section 8(h) of the Agreement, Crescent had the right not to construct a building, and if it did not construct a building, Trump had a right to terminate the Agreement and revoke the license.

The unjust enrichment claim should be dismissed.

V. THE FRAUDULENT CONVEYANCE AND WRONGFUL DISTRIBUTION CLAIMS SHOULD BE DISMISSED

Claims five through eight are asserted against the corporate defendant, Crescent, as well as the individual defendants. These claims fail because there is no underlying breach of contract, *see supra*. Crescent adopts all of the arguments as to claims five through eight asserted by counsel for the individual defendants in their brief, which is hereby incorporated by reference.

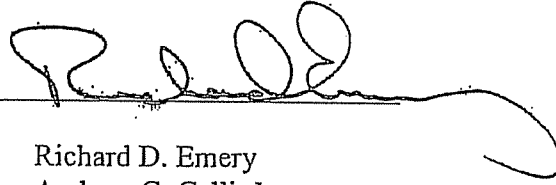
CONCLUSION

For all of the foregoing reasons, all of the claims in the Complaint against Crescent Heights Diamond LLC should be dismissed in their entirety.

Dated: June 27, 2008
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: _____

A handwritten signature in black ink, appearing to read 'Richard D. Emery', written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Richard D. Emery
Andrew G. Celli, Jr.
Ilann M. Maazel
Debra Greenberger

75 Rockefeller Plaza, 20th Floor
New York, New York 10019
(212) 763-5000

Attorneys for Defendant Crescent Heights Diamond, LLC

Exhibit G

Kevin A. Fritz

From: Stephen B. Meister
Sent: Monday, July 21, 2008 10:50 AM
To: Stephen B. Meister; Kevin A. Fritz
Subject: FW: Trump. v. CHs

From: Stephen B. Meister
Sent: Tuesday, July 15, 2008 2:04 PM
To: Richard D. Emery
Cc: Stacey Ashby
Subject: Trump. v. CHs

Richard, I am out today at a funeral due to a death in my family. Stacey mentioned to me that Elan from your office had called today regarding a "short motion" you intended to make, which I understand will seek to strike the proposed second amendment to the license agreement your client submitted to mine, a copy of which was attached to our motion papers. While I do not know the nature of your motion to strike, if and to the extent it is premised on the contention that offers of compromise made during the course of confidential settlement negotiations may not be used as admissions of liability, plaintiff is willing to redact the offered sum from all court copies of the document (I believe no mention of the sum was made in our memo of law), with a reservation of future rights. If this resolves the matter, please let me know and we will work out the logistics of effecting the redaction. If not, regrettably we cannot agree to respond on Friday to a motion we will see for the first time by then end of today. I do not know why you waited till today, the agreed due date of your opposition papers, when you have had our motion papers, including the objectionable exhibit, since the 9th.

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